93-859

Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

Robert J. Eisenbart
Petitioner

vs.

State of Wisconsin, et al.
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Robert J. Eisenbart
in propia persona
2921 93rd Street
Sturtevant, WI 53177
414-886-4196

Questions for Review

Question 1:

Did Judge Evans error when he summarily dismissed the appellant's case without a hearing when factual questions existed and because the defendants had immunity?

Question 2:

Did Judge Evans error when he summarily dismissed and did not address the Pro Se Appellant's constitutional challenge to the application the Domestic Abuse Statue, Wisc Stat 813.12 in that it creates a Bill of Attainer/Bill of Pain and Penalties?

Question 3:

Did Judge Evans error when he summarily dismissed and did not address the Pro Se Appellant's constitutional challenge to the Wisc. Stat. 813.12 for vagueness stating it had already been addressed?

Question 4:

Did Judge Evans error when he summarily dismissed and did not address the Pro Se Appellant's constitutional challenge to the Wisc. Stat 813.12 for its Overbreadth when it bars lawful activities stating it had already been addressed?

Question 5:

Did Judge Evans error when he summarily dismissed and did not address the Pro Se Appellant's due process challenge to the court's refusal to allow him to tape record the proceedings as a lititgant for the purpose of a personnal record?

Question 6:

Did Judge Evans error when he summarily dissmissed and did not address the Pro Se Appellant's anti-trust challenge to the court's refusal to allow him to tape record the preceedings?

Question 7:

Did Judge Evans error when he summarily

dismissed and found that the Pro Se Appellant had a meaningful hearing and an opportunity to call witnesses in the State Court?

Question 8:

Did Judge Evans error when he summarily dismissed and found that the Pro Se Appellant's challenge to the unconstitiutional deprivation of his liberty interests ie right to travel freely, right to work within his employment freely, right to frequent social establishments freely, right to call his daughter on the phone, were nothing more than requests to contact Ms. Masters and not protected rights or violations of his substantive due process rights?

Question 9:

Did Judge Evans error when he summarily dismissed and found that the Pro Se Appellant had no liberty interest in

maintaining a relationship with his daughter's mother ie. Ms. Masters for the purpose of lawful exchanging of information needed for both parents to function as joint custodians?

Question 10:

Did Judge Evans error when he summarily dismissed and found that the Pro Se Apellant's request for a jury in the State Court was not a right because the issues were purely equitable and equity did what should have been done?

Question 11:

Did Judge Evans error when he summarily dismissed and found that the Pro Se Apellant's claim to his reputation being damaged,ie. loss of reputation, could not be maintained without Judge Evans hearing testimony from Appellant's witnesses?

Question 12:

Did Judge Evans error when he failed to

properly address the issue that Court Commisioners do not satisfy the requirement of Judicial participation in the issuance of permanent injunctions?

Question 13:

Did Judge Evans error when he failed to properly address the issue of having a secretarial assistant at counsel table being an Unauthorized Practice of Law violation?

Parties

Robert J. Eisenbart
Plaintiff,

vs.

State of Wisconsin
Defendant,
and

Racine County
Defendant,
and

Hon. Richard S. Brown
Appellant Court Judge,
District 2
personally and in his
official capacity,
Defendant,
and

Hon. Daniel P. Anderson
Appellant Court Judge,
District 2
personally and in
his official capacity,
Defendant,
and

Hon. Harry G. Snyder
Appellant Court Judge,
District 2
personally and in
his official capacity,
Defendant,
and

Hon. Stephen A. Simanek

Circuit Court Judge,
Racine County
personally and in
his official capacity,
Defendant,
and

William Honrath
Asst. Family Court Commissioner
Racine County
personally and In
his official capacity
Defendant,

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JURISDICTION

Jurisdiction is envoked pursuant to 28 U.S. C. 1254 (1) and S.Ct. Rule 10.1(b)(c). Decision of the 7th Circuit Court of Appeals was entered on 29 Apr 93 affirming a decision from the Eastern District of Wisconsin, Judge Evans presiding.

Justice Stevens extended petitioner's time for filing Petition for Writ of Certiorari on 3 Aug 93.

REASON FOR GRANTING THE PETITION

This case presents questions of exceptional legal and practical purpose. The questions presented represent the most fundamental fairness intended by our Constitution and petitioner believes that this Supreme Court can resolve the problems which are of imperative public importance and effect virtually all individuals who must participate in the judicial process.

Statement of the Case

This case went before the 7th Circuit Court of Appeals as a result of the summary dismissal by the District Court Judge, Hon. Terence T. Evans presiding. The underlying case involves violations of the appellant's civil rights. It also involves anti-trust issues. The district court also dismissed the appelants request for a declaratory judgement challenging the constitutionality, both substantively and procedurally, of the Wisconsin Domestic Abuse Injunction Statutes and their due process procedures. In addition, the appellant is seeking money damages against the defendant judge and court commissioner for their ministerial acts which deprived him of his substantive and procedural due process rights. Finally, the appellant is seeking a declaratory judgement stating the

Wisc. Court of Appeals Judges, which have been named as defendants, failed to properly address his pro se appeal.

The appellant challenges the practices of denying him the use of a tape recorder during the proceedings, right to have a notary make an audio record of the proceedings and it further involves the substantive due process right of a litigant to have a secretarial assistant at counsel table. He further challenges the denial of discovery and an opportunity to prepare for a meaningful hearing as being a prohibited Bill of Attainder and/or Bill of Pains and Penalties. He also challenges the denial of a right to a jury for a restraining order/injunction hearing, when the case changes character from a matter of equity to a matter of law. In addittion, the appellant challenges the use of a court commissioner to issue permanent injunctions

as a failure to satisfy the necessary elements of due process . The appeal also addressed a litigants right to a full evidentiary hearing in restraining order/injunction hearings.

STATEMENT OF THE FACTS

The petitioner,Robert Eisenbart, while living with Ms. Masters,fathered a child with her. The events that followed are the subject of this appeal.

In the later part of 1987, the petitioner being the biological father of Emili, while living with Ms. Masters, was trying to get the paternity established. ON 5-9-88, the appellant was adjudicated the father by his own petition. The F.C. commissioner ordered joint custody and alternating two week placement for the daughter. On 6-6-88, at a continued hearing before the Family Court Comm. Van Kampen again ordered joint custody and joint

placement. Ms. Masters remained living with the petitioner.On 6-16-88, the petitioner while living together with Ms. Masters and their new born daughter Emili, called the police to seek their assistance to prevent violence. On 6-16-88, the petitioner discovered the strategy and training papers of Ms. Masters that suggested that she implement certain conduct and create events so as to take the placement, of the newborn daughter, from the petitioner. Upon confronting her with the knowledge of this discovery, Ms. Masters became violent and scratched and scraped the petitioner's arm . The petitioner sought refuge in the bathroom. In the attempt, by the petitioner to seek refuge in the bathroom, the mother scratched her hand when she tried to prevent the petitioner from closing and locking the bathroom door. She telephoned

her estranged husband to seek his assistance in recovering the papers the petitioner discovered. The petitioner called the police while Ms.Masters was outside waiting for her husband. The police arrived and prevented the husband and Ms. Masters from further aggressing on the petitioner.The police in response to the petitioner's call for help, investigated, made no arrests, informed both parties of their rights to file a complaint, and subsequently filed a report. Both parties were given victim response forms and neither party filed any complaint regarding domestic abuse. **Two and a half years later** Linda Master decide to obtain a restraining order and a permanent injunction. In May of 1990, Ms. Masters informed the petitioner that she had received an anonymous phone call stating that the he was going to kill her. The petitioner and

Ms. Masters discussed the matter. The petitioner denied any such allegations and suggested that Ms. Masters call the phone company and have them tap the line in an attempt to capture the calling party. Ms. Masters did contact the phone company, however this was months later and she did not have her phone number changed or phone tapped .From 5-1-90 to 10-5-90, the mother and the petitioner had numerous and continuous contacts with each other while parenting and the placement changeover of their, at this place in time, 2 & 1/2 yr old daughter. A peaceful relationship continued between the parties On 10-5-90, an anonymous phone call was made to the City of Racine Crime Stoppers. **Ten days later** on 10-16-90, a detective of the Racine County Sheriff's Department instructed Ms. Masters to file a petition for a temporary restraining order. On 11-7-

90, three weeks after the Sheriff's contacted Ms. Masters the Hon. Stephen A. Simanek, ex parte, signed a temporary restraining order based on the attached affidavit.The affidavit is couched with spurious, hearsay allegations, misleading and inflammatory accusations all of which were unsupported. In her affidavit, Ms. Masters told deputy Mc Reynolds, on 10-16-90, that the petitioner would not harm her.

On 11-7-90, a process server served the petitioner with the temporary restraining order. Attached to the temporary restraining order was a notice of hearing and the affidavit of Ms.Masters. The affidavit, dated 11-7-90, failed to state the necessary elements, including imminent danger, to support the issuance of a temporary restraining order. It did not contain facts to show an imminent danger of any harm or that the Masters was a victim

of anything, nor did the affidavit show that the petitioner engaged in any conduct present or previously to justify the issuance of a restraining order. The affidavit further failed to state the who, what, when, where, and who did what to whom as is required.On 11-13-90, the petitioner notified the family court commissioner's secretary that he had brought with him a stenographer and a Notary for the purpose of making a audio and stenographic private record of the proceeding. Minutes later, in the waiting room, without identifying himself, without provocation, Comm. Honrath approached the petitioner and became loud, and further indulged in vituperative language. Without identifying himself, Comm. Honrath aggressively and physically confronted the Notary, the petitioner hired to perform secretarial services and make an audio recording of the proceeding. Moments

before the commencement of the hearing, Comm. Honrath rudely informed the appellant that he was closing the hearing and the appellant would not be able to bring anyone in. He further informed the appellant that if he did not enter the hearing room immediately that hearing would go forward without him behind closed doors. At the beginning of the 11-13-90 hearing, Comm. Honrath barred Eisenbart from bringing into the hearing room, his own court reporter and Notary that he hired to make an audio record of the proceedings, and his witnesses. During the hearing before the Comm. Honrath, Ms. Masters, while under oath, stated Robert locked himself in the bathroom and she called her estranged husband to get help to recover papers. The call to the police as made by Eisenbart to prevent imminent violence. The 6-16-88 police report was excluded by Comm.

Comm. Honrath when he prevented Eisenbart from bringing any of his witnesses, one of which was the record keeper from the Sheriff's Department, into the closed hearing room. The court reporter purged critical portions of Ms. Master's testimony.This is evidenced by the isolated unanswered question of Eisenbart regarding the alledged injury of Masters. At the completion of the hearing on 11-13-90, Comm. William Honrath issued a permanent injunction barring the petitioner, Eisenbart, from contacting Ms. Masters for a period of one year. On 11-26-90, the petitioner filed an exparte motion with an attached affidavit listing the reasons for his emergency exparte motion. The motion sought a stay of the injunction pending a De Novo hearing and an order that all testimony be kept on the record. On 11-26-90, the appellant submitted a proposed

introduction of any other unsubstantiated third party hearsay domestic abuse allegations. The appellant further sought a hearing on the matter. The trial court ignored the
motions. On 11-29-90, the petitioner filed a notice of motion and motion for a De Novo hearing on the injunction and also sought a declaratory judgement finding the restraining order and injunction statute unconstitutional. The motion also sought an adjournment for the purposes of discovery, depositions and hearing preparation, It is the custom, practice and policy in Racine County to allow attorneys to bring into court a court reporter to make a private record of the proceeding. It is also the custom practice and policy in Racine County court system to allow attorneys 90 days to do discovery. In addition, the motion sought the vacation of the temporary

to bring into court a court reporter to make a private record of the proceeding. It is also the custom practice and policy in Racine County court system to allow attorneys 90 days to do discovery. In addition, the motion sought the vacation of the temporary restraining order issued by Judge Simanek and the vacation of the permanent injunction issued by Comm. William Honrath. The motion further sought permission to stenographically record the hearing, permission to have a Notary tape record the proceeding and permission to have a secretarial assistant at counsel table. In support of the motion, the petitioner attached an affidavit listing all of the reasons to justify his motion, The court commissioner denied all of the petitioner's requests. On 12-17-90, Judge Simanek held a motion hearing. The petitioner in propria persona and Ms.

Masters appeared in person and with her attorney, Thomas W. Koss. Judge Simanek was put on notice, by Ms. Masters' attorney, of all of the procedural motions that the petitioner had brought before the court. Atty. Koss. argued that no statutory authority or provision existed to permit the petitioner the procedural relief he was requesting. The judge denied the petitioner's motions for adjournment and discovery and proceeded with the hearing. The appellant argued at this time that the family court commissioner is not a judicial officer and therefore lacks the authority to issue an injunction. The Judge than asked the appellant under what authority did he wish to tape record the proceedings, The petitioner stated his reasons for wanting to record the proceedings and further cited Forsythe v Family Court Commissioner, 131 Wis 2d 322, 326 and Craig

v Harvey, 331 U.S. 367, 374. Judge Simanek then ruled against the petitioner and further ruled this applied to the Notary with audio recording equipment also, stating the cases applied only to courts that are not of record. The petitioner stated additional grounds to support the use of his tape recording of the proceedings. The court stated Chapter 61 of the Supreme Court Rules required prior notice for the right to use recorders and further no such permission was obtained. In view of the lack of previously obtained permission, the court ruled against the recording of the proceeding. The court failed to see that the SCR 61 applied to media not litigants. The court ignored the balance of the petitioner's motion and called Ms. Masters to the stand. The court ignored all of the procedural due process motions submitted by the petitioner

including his motion for adjournment. The petitioner is not an attorney and the Judge had the duty to most liberally construe the paperwork he filed. Judge Simanek had a duty pursuant to the notice at the beginning of the petitioner's motions. The appellant asked the court permission to have his secretary set with him at counsel table and assist him with his paperwork and notes .The court ruled against the petitioner's motion for a secretary stating the secretary was not a lawyer and therefore not permitted at counsel table. Ms. Master, during direct testimony, referred to the alledged acts of, kicking, room to room shoving, being thrown against a refrigerator, being kicked over a coffee table three times, clothing be torn and a scratch to the hand. None of the above, except for the scratch to the hand, appeared in the police report Ms. Masters

testified that she called her estranged husband to assist her in getting her legal papers back from the petitioner who had taken refuge in the bathroom .She stated she went outside to wait for her estranged husband. The petitioner called the police for help in view of the imminent danger . Ms. Masters alledged that back in 1988 the petitioner during a discussion between her and the him over how and what it would take to end the custody issue, the petitioner stated that one of us would have to die.The comment was taken out of text and was not threatening nor the petitioner's.. She then testified that in May of 1990 she received a call from an unidentified person stating that the petitioner was going to kill her. She testified that her husband received a similar call the next day from a woman stating the petitioner was going to kill both, Ms. Masters and her husband. Ms.

Masters confronted the petitioner that evening and asked him who could be making these calls. He responded that he did not know and stated he was getting weird calls also. **She did nothing more about the calls for the next six months until 10-16-90.** Ms. Masters came home one evening, in October of 1990, to find a Racine County Sheriff's Department Deputy,McReynolds, waiting for her in her living room. He told her to be careful and stated he believed the petitioner might try to kill her. He stated that the source of information for the detective was a unidentified caller from the Crime Stoppers. No proof of imminent danger existed.

THE ENTIRE DIRECT TESTIMONY OF THE PETITIONER WAS NOT CHALLENGED BY MS. MASTERS OR HER ATTORNEY.

The uncontroverted testimony of the petitioner was not challenged. When the

Judge asked Atty. Koss if he had any questions or cross examination of the petitioner he said no.

AFTER THE CLOSE OF TESTIMONY JUDGE SIMANEK MADE THE FOLLOWING ERRORS IN HIS FINDINGS

After the close of testimony, no cross examination of the petitioner by Ms. Master's attorney, the petitioner's testimony stood unchallenged, the trial court Judge stated that the petitioner did not deny a physical confrontation.This is incorrect, the testimony of the petitioner clearly states he fled the room and sought refuge in the bathroom to avoid imminent harm. She was the aggressor, grabbing, scratching and attempting to take the papers away from the petitioner.**The incident used by the judge occurred over 2 years prior to the issuance of a temporary restraining order.** Judge Simanek further stated that this was a full blown hearing

Nothing could be farther from the truth. All of the petitioner motions were denied. The petitioner was not granted discovery, denied an adjournment to allow an opportunity to prepare for the hearing, did not have any of his witnesses present, no depositions were allowed to be taken by the petitioner and further the petitioner was denied a jury trial in an attempt to vacate an injunction. The next error is made by Judge Simanek barring the petitioner from any lawful contact with Ms. Master at work. The petitioner is a registered nurse, in charge of a unit at Southern Wisconsin Center. Ms. Masters is a resident care technician at the same facility. This order effected the job performance and responsibilities of the petitioner under certain circumstances at the Wisconsin Center. The petitioner raised the issue of the impingement of his constitutional

rights as a result of the injunction.The Judge acknowledges the petitioner's arguments and states these are good appeal issues. The Judge erred when he gave credence to anonymous phone calls to justify the injunction.

Judge Simanek again erred when the petitioner referred to the procedural safeguards he was entitled to, referring to the Blazel v Bradley case, 698 F Supp 756 (1988) . The Judge stated he had a full blown hearing.The court committed reversible error on the jury issue. The appellant submitted a motion for a jury to the clerk of the trial court judge. She refused to schedule a jury based on the procedures of Judge Simanek. Judge Simanek stated the petitioner was not entitled to a jury trial because this was a equitable action and juries were not available. He stated the only time a jury is preserved is

when the issue is over $20. On 12-17-90, Judge Simanek signed an injunction barring the petitioner from any contact with Ms. Masters which included legal and unharrassing telephone and face to face contact in the exercise of his rights as a joint legal custodian and at job. On 12-20-90, the petitioner filed a notice of appeal with the Circuit Court. On 1-2-91, Judge Simanek signed the order, denying all of the petitioner's motions. On 1-2-91, Judge Simanek issued and signed a 2 year injunction. In addition, Judge Simanek denied all of the petitioner's challenges as to the constitutionality of the restraining order/injunction statutes. The Supreme Court of Wisconsin commissioned a study on the issues of Tape Recording, Secretartial Assistant and use of Notary.It is not complete as of this date. On 9-18-91, The Wisconsin Court of Appeals issued a

decision on the petitioner's appeal. The court of Appeals stated the appeal of the petitioner's was frivolous. The Court of appeals referred to Justice Crabb's decision in Blazel v Bradley to state that the constitutional challenges were all made. The Blazel case states on Page 760 that no one is challenging the Domestic Abuse Injunction Statute. Justice Crabb stated in her decision that there was no reason to create a special class to justify the statute. She also stated in her decision that a court commissioners fail to meet the judicial requirement to satisfy due process. She also stated she could not address the other Constitutional challenges found in the Schramek case because Blazel did not challenge them as well. On 10-21-91, filed a Petition for review with the Wisconsin Supreme Court. The court dismissed his petition because it was not

filed on time. It was 1 (one) day late due to vague information given Mr. Eisenbart by Supreme Court Clerk. On 11-5-91, Linda Masters' attorney filed a motion seeking $6,848 money judgement against the petitioner for frivolous fee assessment.

On 11-25-91, the petitioner filed a summons and complaint naming The State of Wisconsin, Racine County, Appellate Judges, Brown, Anderson & Snyder, Judge Simanek and Assistant Family court Commissioner William Honrath. On 12-16-91, the petitioner filed an amended complaint. The petitioner was having trouble obtaining service on the Judges that were represented by the Asst. Attorney General James McDermott. The service of the judges and the failure of the Asst. Atty. General to cooperate was a threshold issue. Service was finally perfected on the judges and the proof of service was filed with the court on 2-18-

92. The Assistant Attorney General, James McDermott, filed a series of motions calling for the dismissal of his clients. The Corporation Counsel for Racine County never filed a motion calling for the dismissal of Racine County and Asst. Fam. Court Comm. William Honrath.
The petitioner filed briefs in response to the motions for dismissal brought on by the Atty Gen. The Atty. Asst. Gen. James McDermott stated in his motion and supporting affidavit that there were some challenges that were never addressed regarding the Domestic Injunction Statutes. The Bill of Attainder and/or Bill of Pains and penalties have never been addressed. In addition, Judge Evans stated the Wisconsin Court of Appeals addressed the constitutional challenges to 813.12 in Shramek v Bohren and by Fed. Judge Barbara Crabb in Blazel v Bradley. Neither of the

above mentioned cases addressed the procedural due process voids that exist. There is no provision for discovery, time to prepare for a meaningful hearing and an orderly procedure to call witnesses. The injunction also bars the appellant from performing lawful conduct. The Shramek case fails to address vagueness and it fails to completely address overbreadth issue. It limits its overbreadth issue to freedom of speech. The petitioner has joint legal custody with Linda Masters and has a duty to perform normal parenting duties. The parenting duties require frequent conversation about the child. The petitioner is required to communicate with the mother through her attorney, however, no one has determined who is going to pay for the attorney and when he is available. In addition, petitioner is not allowed to contact his daughter by telephone as are

all other parents. Judge Evans states that the petitionee may have a liberty in contacting his daughter, however, he also maintains that that right has not been impacted by the injunction. Do to the age of the child, the daughter is not able to communicate for herself on issues of health, school and certain personal issues. As a joint custodial parent, the petitioner has the right to have access to all information as it occurs to insure his maximal parental performance in the care and custody of his daughter. The petitioner requested a jury in the trial court. Judge Evans states that the Court of Appeals of Wisconsin has addressed the issue. The injunction goes far beyond the historically protected property interests, which are purely equitable, and into constitutionally protected interests, which are, (ie. right to travel, right to work, right to

associate and the right to be left alone.) matters of law and not equity. Shramek failed to discuss that injunctions should be narrowly constructed to bar only those activities which are unlawful.

On page 7 of Judge Evans decision, he states the petitioner had a hearing. Nothing could be farther from the truth. At the Court Commissioner's hearing on 11-13-90, the petitioner was not allowed to bring in any witnesses, create a private record, have a secretarial assistant and forced to move forward under duress. At the 12-17-90 hearing, Judge Simanek denied the petitioner an adjournment for the purposes of discovery, time to assemble witnesses, the right to make a private record and a secretarial assistant at counsel table. On 12-19-90, the petitioner filed an appeal with the Wisconsin Court of Appeals and appealed all of the same issues

described above. The Court of Appeals issued a decision on 9-18-91. They referred to the appeal as frivolous and remanded the matter back to the trial court for a determination of fees. The appellate Judges, Brown, Anderson & Snyder failed to most liberally construe the issues raised in the petitioner's brief. They held the appellant to the same high standards as an attorney. They completely discounted his due process claims of discovery and an opportunity to prepare. The arguments of the petitioner were construed as being identical to the arguments in Schramek, when in fact, the arguments advanced rose to a much higher level than any argument raised in Schramek. In addition, the petitioner raised the issue of prior conduct as being vague and subject to the limitations of anyone's imagination. This petitioner did offer reasons to change the

law, however, the Court of Appeals ignored them. Judge Evans ignored them in his decision of 2-18-92. This petitioner asked for a trial based on Rule 59 (a)(e) and Rule 12 (b)(c) of F.R.C.P. with suporting Brief and Affidavit(s) asking for a trial and an order vacating the 2-6-92 summary dismissal. Judge Evans responded by reissuing the same order on 2-18-92 with only clerical errors corrected which was a response to the petitioner's motion of 13 Feb 92. This Appellant sent letter to clarify orders of 2-18-92 and 3-5-92. Response from Judge Evans was there will be no further substantive orders. Notice of Appeal filed by petitioner 3-18-92.

ARGUEMENTS FOR QUESTION NO. 1

Complaint should not be dismissed merely because the plaintiff's allegations do not support a particular legal theory he advances for the Court is under the duty to examine complaint to determine if allegations provide for relief on any possible theory. Bonner v Circuit Court of City of St. Louis Mo.,C.A.Mo.526 F.2d 1331. Pro Se civil rights complaint should not be dismissed for failure to state a claim unless it appears beyond doubt he can prove no set of facts to support his claim. Huges v. Rowe Ill. 1980, 101 S.Ct. 173. When questions of fact exist, and they did in the appelant's case because of affidavits of witnesses submitted, the court should not discredit either set of allegations and hence, the dismissal was in error. Lewis v. Bragan C.A.Ala.1978, 576 F.2d. 678. Rule 56 F.R.C.P states that the appellant was to

respond to motion to dismiss with affidavits setting for specific facts showing that there is an issue for trial. Appellant did so in his Motion to Vacate Order of 2-6-92 from Judge Evans based on Rule 59 F.R.C.P. when he submitted affidavits of two of several material witnesses which questioned the facts of the previous State decision. The defendants are not immune from declaratory judgements nor for acts without authority. Wisconsin Supreme Court Rule 61 gives judges the right to determine how media electronically records proceedings but not litigants.

ARGUEMENT FOR QUESTON NO. 2

The application of the Wisconsin Statues 813.12 by the courts creates a bill of Pains and Penalties through the following process. A petitioner alleges that some crime against them has been committed or may occur based on prior conduct of the

respondent. This alleged prior conduct requires no documentary proof on behalf of the petitioner or specific allegations to who did what to whom, when,where,how and why.Any allegations(or lies) will get the process started ie. deprive the respondent of his liberty interests. See Blazel v. Bradley 698 F.Supp 756 at 763.

Once a restraining order is issued, it is the practice of the Wisconsin Courts, to grant a permanent injunction for 1 to 2 years based on the allegations alone. The hearing in the Court Commisioner's Office or so called trial and due process before a Judge after the complaint is filed, for all intent and purposes are nothing more than a perfunctory gestures and will continue all restraints and punishment for 1 to 2 years. Trials do not require a showing of any proof or documentation of allegations. It is a well known fact in Wisconsin that all

Temporary Restraining Orders become permanent barring one act and that is a petitioner requesting orders to be vacated. Appellant's searched hundreds of records in the 4 largest counties in Wisconsin and could find not one petition that the court had not turned into a permanent injunction. Legislative acts, no matter what their form, that apply to persons in such a way as to inflict punishment on them without proper trial is nothing more than Bill of Pains and Penalties. U.S. v. Brown, 381 U.S. 437. 448-449; U.S. v. Lovett, 328 U.S. 303,315. An act of Legislation which allows infliction of punishment upon persons supposed to be guilty.... without conviction of some crime in the ordinary course of judicial proceedings is a Bill of Pains and Penalties. 2 Wood. Lect. 625. In these cases were there is no documentary proof of actions or even more so past

conduct, the Legislature has by constuction of Wisconsin Statues 813.12 allowed a petitioner in the place of the Legislature, to assume the powers and office of judge, judicial magistracy to pronounce guilt of the respondent, without any meaningful forms of trial safeguards; it determines the sufficiency of the proofs produced, whether comfortable to the rules of evidence or otherwise, and it fixes the degree of punishment in accordance with its own notions of the punishment, in accordance with its own notions of the enormity of the offense. Cummings v. Missouri, 4 Wall, 321-323.

Further punishment can, and is inflicted in many cases, by this Statue 813.12 carrying over into Chapter 767 of Wisconsin Statues, See Wisc. Stats. 767.24 (5)(i). This allows a court to deny joint legal custody to an otherwise fit parent if

the other parent has accused them of domestic abuse. In practice the only proof the courts need is if an injunction was issued. How convienient for a parent who is apposed to joint custody, just accuse the other of domestic abuse and you've struck a blow which one can not defend against and will surely guarantee their loss of custody in Family Court. The only protection one has is if the courts require some proof of past conduct which is clear and convincing that the respondent is an abuser. Without this protection against false allegations, Statue 813.12 as applied to all respondents is nothing more than a Bill of Pain and Penalties. Since the Domestic Abuse Statue contains nothing but Criminal Laws taken from other Statues, there should be some sort of evidence that a crime has been committed.

"It is also a well recognized rule that the fact that a crime has been

committed cannot be proved by extra-judicial ... statements... and there must be some evidence or corraborating circumstances tending to show that a crime has been committed aside from such statements." State v. Keller 8 ID 699.704.

Since there are no criminal or civil consequences to Petitioners even if they have made false allegations or perjured themselves, these individuals have nothing to lose. Because of the prevailing atmosphere against Respondent/Men in Domestic Abuse proceedings, the Family Court are acting in a despicable manner when allowing unsubstantiated allegations to result in violations of Respondents' constitutional rights. Petitioners of Domestic Abuse Allegations, once a hearing or trial is set, should be treated as police officers and lay witnesses were in Briscoe v. LaHue 460 U.S. 328 (1983). As they are absolutely immune from damages for their testimony even if they gave false statements and were malicious, to protect

the Respondent, corraborating evidence should be required, otherwise you have a Statue that once the petition is filed, a Respondent has no chance of vindicating himself of a false allegation. This then is nothing more than a Bill of Pain and Penalties. Further the Statue allows the same process of unsubstantiated allegations to place a Respondent in jail for 9 months and fined $1000.00, strictly on the testimony of the Petitioner.

"The deprivation of any rights,civil or political,previously enjoyed, may be punishment... punishment is not therefore restricted to deprivation of life, liberty, or property, but also embraces deprivation or suspension of...civil rights...punishment is therefore measured by its effects on the citizen, not mearly by legislative intent. Cummings v. Missouri 71 U.S.(4 Wall) 277 at320-322.

Guilt must precede punishment. As Judge Simanek of the District Court, Wisconsin stated "You are not being found guilty of anything". As the reasons for issuance of an injunction under Wisc. Stats. 813.12 are

all criminal, one must be found guilty of a crime before the injunction should be issued, ie. punishment applied United States v. Chadha 103 S.Ct. 2764 (Emphasis added).

> Under this scheme, the bill of attainer clause in meant to ensure that Congress does not legislate away parties rights to a proper judicial hearing and that "cases" appropriately resolved by dispassionate courts are not decided by a majoritarian steamroller." United States v. Brown 381 U.S. 437 at 444-445.

State judges are nothing more than lawyers who have run for a political office and are under the same pressures for re-election as any politician. When the gender biased media distorts Domestic Abuse to the degree of making all men abusers and all women victims, men become a burdened class in need of protection from the steamrolling effects of politically pressured judges. Statues that are not constructed to protect the falsely accused are deficient on their face and in many cases as applied.

ARGUEMENT FOR QUESTION NO. 3

"When a statue infringes on the exercise of First Amendment rights, the burden of establishing its constitutionality is on its proponent." State v. Mitchell,473 N.W.2nd 1. Wisc. Stats. 813.12 infringes on several First Amendment rights which are lawful activities ie., right to associate with ones children over the phone and to keep joint custody if a fit parent ; right to work at ones chosen profession without restriction of where,when, and around whom you can work unless unlawful; right to travel freely and frequent any public place for lawful purposes without restriction; right of privacy to protect ones reputation from destruction by others or the government through actions which are arbitrary and are not compelling state interests.

Vagueness Doctrine is concerned with providing officials with explicit guidelines in order to avoid arbitrary and discriminatory enforcement; to that end, laws are invalidated if they are lacking in terms of objective measurement. Big Mama Rag Inc. v. U.S., 631 F.2nd 1030, 203 U.S.App.D.C. 448.

Wisc. Stats. 813.12 give no objective may of measuring what "prior conduct" is except to leave it to the arbitrary interpretation of the Court, juries,or the Law enforcement officers, and based on only the unsubstantiated allegations of a Petitioner.

Where vague statue abuts upon exercise of fundamental rights statue operates to inhibit exercise of such freedoms. Charles v. Daley, 749 F.2nd. 452, probable jurisdiction noted Diamond v. Charles, 105 S.Ct. 2356.

Vague law does not give a person of ordinary intelligence a reasonable opportunity to comply with the law(as any lie will effect even a law abiding citizen's protected rights and thus removes the ability to reasonably comply); second, vague law lacks explicit standards for its application and thus impermissably delegates basic policy matters to policemen,judges,juries, and even petitioners for resolution on ad hoc and

subjective basis, with attendant dangers of arbitrary and discriminatory applications. Brockert v. Skornicka, 711 F.2nd. 1376.

Vagueness is tested by more exacting standards when constitutionally protected rights are threatened; in such circumstances vagueness and overbreadth analysis are cognate. Record Head Corp v. Sachen, 682 F.2nd 672.

In Wisconsin as well as other states it is a known fact that 61 to 83% of all domestic abuse complaints are unsubstantiated. Appellant pulled 517 random records and found in Racine County, Wisconsin that 81% of those had nothing but unsubstantiated allegations which resulted in injunctions. These injunctions last for as long as the petitioner requests as it is also a practice of the courts to renew them ex parte on request. this results in deprivation of the Respondent's protected rights for an indefinite period of time.

The Supreme Court of the United States has announced that it rigidly adheres to the rule never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be

applied. United States v. Raines, 362 US 17, 80 S.Ct. 1384.

The challenges of vagueness presented by this appellant were never reached in either Blazel v. Bradley, 698 F. Supp. 756 or Schramek v. Bohren, 429 N.W.2d 501.

ARGUEMENTS FOR QUESTION NO. 4

Fact that a given law or procedure is efficient,convenient, and useful in facilitating functions of government, standing alone will not save it if it is contrary to the Constitution. I.N.S. v. Chadha, 103 S.Ct. 2764.

A clear and precise enactment my nevertheless be overbroad if in its reach it prohibits constitutionally protected conduct. McNea v. Garey, 434 F.Supp. 95.; Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 104 S.Ct. 2118, 466 U.S. 789.

A statue should balance the rights of both parties effected as well as attempt to balance the protection of the law for both parties.

For due process purposes, rationality must be determined by a comparison of the problem to be remedied with the nature and the scope of the burden imposed to remedy the problem.....the equities of the burdens imposed and the inclusion of statutory

provisions designed to limit and moderate the impact of the burdens. Nachman Corp.,592 F.2d 947, certiorari granted 99 S.Ct. 2881, 442 U.S. 940.

To meet requirements of due process and equal protection, a statue must not subject an individual to arbitrary or uneven exercise of power or influence over the court(Emphesis added) U.S. v. Welden, 568 F.Supp. 516.

Overbreadth doctrine prohibits a statue from making innocent or constitutionally protected conduct criminal. Record Revolution No. 6, Inc. v. City of Parma, 638 F.2d. 916, vacated 101 S.Ct. 2998, 451 U.S. 1013.

As Wisc. Stats. 813.12 affords no protection of lawful constitutionally protected conduct in fact restricts it, and it has an uneven exercise of power, influence over the court by the mear fact that it requires no corraborating evidence for suspect "prior conduct" except to empower the petitioner to allege it. There is no possible way to defend against false allegations and thus no way of protecting oneself from erroneous deprivation of protected rights.

ARGUEMENT FOR QUESTION NO. 5

The grounds for using the tape recorder are as follows: the Respondent needs the recording of the proceedings as to review the events. The respondent as well as any litigant does not have the funds necessary to purchase an expensive transcript nor the time it takes to obtain one. With a recording one can review the events ,decide if an appeal is in order, and order only the portions necessary for the appeal. THE RIGHT TO MAKE A COMPLETE PRIVATE VERBATIM RECORD IS NECESSARY TO ENSURE THE ACCOUNTABILITY OF THE JUDICIARY AND/OR ITS REPORTERS. In Craig v. Harvey, 331 U.S. 367,374 (1947), Justice William O. Douglas, speaking for the Supreme Court said:

> There is no special prerequisites of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress,edit, or censor events which transpire in

proceedings before it."

This petitioner contends that there is no cognizable reason for any court to deny a litigant the right to tape record proceedings especially a Pro Se who cannot take notes and compete with seasoned members of the bar at the same time. In many states this is a practice of the court to tape record proceedings and give them to litigants upon leaving proceedings. To deny this right to a litigant seems to be unreasonable and an abuse of the court's discretion.

ARGUEMENT FOR QUESTION NO. 6

Title 15 U.S.C., Sec. 1-7 encourage private antitrust litigation to vindicate the important public interest in free competition. See Fortner Enterprises, Inc. v. U.S. Steel Corp.,Ky. 1969, 89 S.Ct. 1252. 394 U.S. 495.

Sections 1-7 of 15 U.S.C. were designed to be a comprehensive charter of

economic liberty aimed at preserving free and unfettered competition as the rule of trade, and they rest on the premise that unrestrained interaction of competitive forces will yeild the best allocation of economic resources of the country, the lowest prices, the highest quality and the greatest material progress, while at the same time providing enviroment conducive to preservation of democratic political and social institutions. Northern Pac. Ry. Co. v. U.S., Wash. 1958, 78 S.Ct. 514, 356 U.S.1

This petitioner believes that the right to tape record the proceedings, or have a secretarial assistant/notary do so ensures that he will recieve the highest quality product for the lowest price. When the right to record is denied a litigant is forced to purchase a total transcript at an inflated price ($1.75/page) and without the ability to verify the quality or accuracy. To deny a litigant the right to tape record for a private uses named above is a violation of 15 U.S.C. Sec. 1-7 and also Wisc. Stats 133 which also protect against antitrust violations.

If reporters are not immune absolutely from damages, Jeffery Antoine v. Byers & Anderson, Inc., et al 113 S.Ct. 2167 (June 1993) and judges are not immune from administrative acts, Forrester v. White,484 U.S. 219,229(1988) , then judges should not deny a litigant the right to record for purposes of checking accuracy of transcript. If they do they are simply protecting the reporter by making it impossible to challenge the record or to limit the costs of transcript imposed by law and paid to reporter. This is nothing short of a conspiracy under 15 U.S.C..

ARGUEMENTS FOR QUESTION NO. 7

Judge Evans agreed with the Court of Appeals of Wisconsin and the Trial Court that this appellant had a meaningful hearing. The trial court deprived him of the right to discovery and time to properly call witnesses. The deprivation of

discovery fails to meet the balancing test of Mathews v. Eldridge, 96 S.Ct. 893,903. The Wisconsin Court of Appeals misapplied Hales Corners Savings and Loan Assoc. v. Kohlmetz, 154 N.W.2d 329 when it stated that the request for adjournment was in the middle of trial. The trial court had a motion before it way before trial and failed to most liberally construe to appellant's request for more time to prepare his witnesses and do discovery. When the discretion of the court is used in such a way as to deprive a litigant of his day in court there is an abuse of discretion. The trial should not be had until the parties have been afforded a reasonable opportunity to prepare their cases or proof. See Housing Authority of Williamson County v. Collier, 302 N.E.2d 365, 13 Ill App 3d 1088 ; Keplin v. Hardware Mut. Cas. Co., 129 N.W.2d, 321, 24

Wis 2d 319. ; and Small v. Mungo, 175 S.E.2d 802, 254 S.C. 438.

Practice and Procedure in the Wisconsin courts is to allow a skilled attorney 90 days for dicovery and preparation before a trial. The Wisconsin Court gave the petitioner only 25 days excluding holidays to complete discovery and prepare. Petitioner believes the trial court abused its discretion and Judge Evans erred when he agreed with the Wisc. Appellate Court that petitioner as given a meaningful hearing at a meaningful time.

The petitioner failed to establish to necessary requirements of imminent danger as nothing extraordinary happened for the 6 months between the alleged phone calls and the petition for injunction. Nothing extraordinary or harrassing happened for 2 and 1/2 years. Nothing at all happened to the petitioner that was substantiated by

any proof that Appellant had done anything to her. See Blazel v. Bradley.

ARGUEMENTS FOR QUESTION NO. 8 & 9

The rights of joint custodial parents are equal as well as their responsibilities when applied to making decisions for their children. See Matz v. Matz 479 N.W.2d 245 (Wis.App.1991) . If this is true then one can only deduct that if one parent does not have contact with the child on a daily basis, as does the parent with primary custody, but has joint legal custody, that parent should at least have the opportunity to talk to his children by phone to be able to assess needs on a regular basis. Contact with the Mother is not necessary on a regular basis but is necessary to proper share information about health,school, and general welfare. A third parties interpretation of their needs may be defective as exchange of information

loses accuracy as it goes from one person to another. The father should at least be able to communicate with the mother about the child without harassment which would be a lawful exchange of information by phone or by letter. It is unreasonable to assume that if two parents who share custody, but do not share information about the children, can perform their duties as equal parents with the same quality. This is not in the best interest of the child. The rest of the arguement for these issues should incorporate arguements for issues no. 3 & 4.

ARGUEMENT FOR QUESTION NO. 10

Appellant holds that the Wisc. Stats. 813.12 is an impermissable expansion of Equity Jurisdiction because equity may not enjoin the commission of a crime. All of the violations which are described within the context of 813.12 are crimes found in

other statues,criminal statues of Wisconsin Law. Moreover the provision of the Abuse Statue were interdependent on criminal statues requirements and lacked severability thus the statue is void. The equity courts jurisdiction is limited to the jurisdiction it had when Wisconsin adopted its Constitution. The remedies at law in Wisconsin are adequate and still operate effectively to prosecute criminally anyone who violates them. There is no reason to create a suspect burdened class, ie. those who have lived with someone in the past, and by doing so deprive the accused of his Constitutional right to trial by jury. All one has to do is compel the district attorneys to prosecute under criminal statues which is his/her duty. Also if they refuse to prosecute they may be compelled under 18 U.S.C. 1505 or faces charges themselves for obstruction of

justice. Domestic abuse does not fall within the narrow exceptions to equity enjoining a crime which apply to pecuniary rights of Petitioner or irreparable injury to property. To include acts which are purely criminal the courts would infringe on a Defendant's right to a trial by jury by summarily impacting protected liberty rights of the Defendant without a determination of guilt. The fact that Wisconsin has blended equity and law is not a reason to deny the right to a trial when protected liberty interests are arbitrarily taken away without a guilty finding. This petitioner realizes the use of the Temporary Restraining Orders to prevent immeadiate harm but that there should be some corraborating evidence that harm is immeadiate. Blazel v. Bradley (Emphesis added). One other aspect the Wisconsin Legislature failed to do is to hold proper

hearings on whether the remedies at law are truely inadequate. Their findings were arbitrary and based on a hearing where only one side of the issue was presented. There does not exist a Declaration of Purpose that the remedies at law are inadequate and hearings should have been held to hear both sides of the argument before arbitrarily enjoining equity to crime. See Bates v. Bates, 793 S.W.2d 788 (Ark 1990).

If the trial court insisted on defeating a trial request based on equity taking jurisdiction it should have found that Ms. Masters also came to equity with unclean hands. This was proven by the fact that this petitioner had injuries which surpassed the one small scrape of Ms. Masters. Petitioner has consistently maintained the same facts that he was attacked and retreated to bathroom. Ms. Masters was the aggressor and not entitled

to an injunction 2 and 1/2 years later or at all. She never established she was a victim of anything accept her own lies. Under clean hands maxim, the petition should have been denied on grounds that petitioner committed perjury. Hughs v. Eisner, 81 A.2d 394; Gaudiosi v. Mellon C.A.Pa. 269 F.2d 873.

Equity did not do the equitable thing when it allowed the petitioner to obtain an injunction from a 2 and 1/2 year old unsubstantiated incident. Equity aids the vigilant, not those who slumber on their rights. Equity should be used as a shield not as a sword. There was no compelling state interest to issue a shield to someone who had had no use for one for 2 and 1/2 years. The court abused its discretion by not barring relief due to laches. The court should have at the very least exercised its discretion and not favored a stale claim

without the strictest proof as a requirement as opposed to mere preponderance when it applied 813.12 to the Appellant's case claiming it was purely an equitable issue. Abramham v. Ordway,D.C. 15 S.Ct 894. ; Nelson v. Wilson, 162 N.E. 144, 331 Ill 11. This petitioner still maintains that when constitutionally protect rights are at risk of deprivation, equity court cannot maintain that it has jurisdiction because then the issues become ones of law.

ARGUMENT FOR QUESTION NO. 11

Appellant was never allowed to call his employers as witnesses to establish to impact the injunction had on his reputation and thus his ability to advance in his profession as a Registered Nurse in a sensitive area of caring for the Developmentally Disabled. Witnesses would have testified that considering the

allegations were of the nature of crimes of abuse that the Appellant's ability to provide safety and care for those under his professional responsibility was suspect. This is damaging to his reputation and his ability to advance which qualifies as a legitimate complaint for civil rights violation. See Harris v. Harvey, 436 F. Supp. 143.

ARGUEMENT FOR QUESTION NO. 12

All the petitioner has to offer here as an arguement is that Justice Crabb in Blazel v. Bradley states the same..... arguement that Family Court Commissioners do not satisfy the requirement of judicial participation and thus may not issue permanent injunctions. Blazel v. Bradley, 698 F.Supp. 756 at 764.

ARGUEMENTS FOR QUESTION NO. 13

The mear definition of "Assistant" ordinarily refers to an employee whose

duties are to help his superior, to whom he must look for authority to act. State ex rel. Dunn v. Ayers, 112 Mont. 120, 113 P.2d 785,788.; Saxby v. Sonnerman, 149 N.E. 526,528, 318 Ill. 600. The definition of "Secretary" frequently means official scribe or writer. It has been synonymous with clerk. Neither of these terms can be made to imply that the individual is at anytime practicing law when at counsel table with a Pro Se litigant. They are neither giving legal advice or representing the litigant. This petitioner fails to see how the Circuit Courts can threaten to hold these individuals in violation of Unauthorized Practice of Law.

It is a known fact that lawyers have clerks,paralegals, and assistants at counsel table frequently without objection by the court. This petitioner feels that this is a ministerial act of the court and

done to chill the ardor of an unskilled Pro Se litigant. This petitioner would like this Court to address this issue if there is an argument against allowing this practice for Pro Se litigants as well as lawyers.

CONCLUSION

As the foregoing arguments have shown, supported by facts, the following relief is requested:

1. Judge Evans committed reversable error when he prematurely dismissed the petitioner's case without a hearing when factual questions existed.
2. Judge Evans committed reversible error when he summarily dismissed and did not address the Pro Se petitioner's constitutional challenge to Wisc. Stats. 813.12 in that it creates a Bill of Pain and Penalties.
3. Judge Evans committed reversible error

When he summarily dismissed the petitioner's challenge to the Wisc. Stats. 813.12 for vagueness stating it had already been addressed.

4. Judge Evans committed reversible error when he summarily dismissed the petitioner's challenge to Wisc. Stats. 813.12 for its Overbreadth when it bars lawful conducts/activities stating it had already been addressed.
5. Judge Evans committed reversible error when he summarily dismissed and did not address the due process challenge of the petitioner to the Circuit court's refusal to allow him to tape record for a private record.
6. Judge Evans committed reversible error when he summarily dismissed and <u>did not address</u> the petitioner's anti-trust challenge to the court's refusal to allow him to record the proceedings.

7. Judge Evans committed reversible error when he summarily dismissed and found that the petitioner had a meaningful hearing and a timely opportunity to call witnesses in the State Court.
8. Judge Evans committed reversible error wehen he summarily dismissed and found that the petitioner's challenge to the unconstitutional deprivation of his liberty interests ie. right to travel freely, right to work within his employment freely, right to frequent social establishments freely, right to call his daughter on the phone were nothing more than requests to contact Ms. Masters and they were not protected rights or violations of his substantive due process rights.
9. Judge Evans comitted reversible error when he summarily dismissed and found that the petitioner's had no liberty

interest in maintaining a relationship with his daughter's mother for the purpose of lawful exchange of information needed for both parents to function as joint custodians and provide for the best interests of the child.

10. Judge Evans committed reversible error when he summarily dismissed and found that the petitioner's request for a jury in the state court was not a right because the issues were purely equitable and equity did what should have been done.

11. Judge Evans committed reversible error when he summarily dismissed and found that the petitioner's lose of reputation and its consequence could not be maintained without hearing testimony from Employer witnesses.

12. Judge Evans committed reversible error when he summarily dismissed and failed to

properly address the issue that Court Commissioners do not satisfy the requirement of Judicial participation in the issuance of permanent injunctions.

13. Judge Evans committed reversible error when he summarily dismissed and failed to proper address the issue of the Appellant having secretarial assistance at counsel table being a violation of Unauthorized Practice of Law.

14. An order declaring Wisc. Stats. 813.12 and procedures unconstitutional on its face in full or part and as applied because;

a. permanent injunctions are issued by Commissioners who are judicial officers.

b. Injunctions bar lawful activity constitutional protect and without a finding of guilt and therefore is Overbreadth.

c. Injunctions impact a persons right to maintain joint custody of their children

even when they're fit parents.

d.The definition of "Prior Conduct" is vague and the statue allows for an unbalance of power in favor of the petitioner with no protection for the espondent against false allegations thus undamentally Unconstitutional.

e.It does not provide for proceedural due process rights of discovery and a meaningful hearing.

f.It does not provide for the right to a jury when protected rights are at risk to the Respondent and thus the impact is not purely equitable but a question of law.

g.In its present for creates a Bill of Pains and Penalties.

15. Declaratory Judgement that tape recording the proceedings of a trial by litigant for the purpose of private record and as a protection under the anti-trust laws is a <u>necessary</u> right.

16. Declaratory Judgement that having an assistant at counsel table is not a violation of Unauthorized Practice of Law.

17. Judgement that the petitioner's appeal was not frivolous.

18. 7th Circuit of Appeals errored when it affirmed Judge Evans without additional comment agreeing in total with his decision and refusal to address certain issues.

Robert J. Eisenbart, in propia persona

APPENDIX

1- DECISION OF THE 7TH CIRCUIT

2- DECISION OF JUDGE EVANS- E.DIST OF WISC

3- FEDERAL COMPLAINT OF PETITIONER

4- WISCONSIN COURT'S DECISION

5- STATISTICS ON VIOLENCE OF MEN AND WOMEN ON OTHERS AS DATA FOR QUESTION OF NEED TO UNCONSTITUTIONALLY EXPAND EQUITY TO ENJOIN CRIMINAL ACTS SUCH AS ASSAULT/BATTERY, SEXUAL
ASSAULT, AND HARASSMENT AS HAS HAPPENED IN WISCONSIN AND MANT OTHER STATES.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

Submitted April 14, 1993

Decided April 29, 1993

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

No. 92-1722

ROBERT J. EISENBART, Plaintiff-Appellant, v. STATE OF WISCONSIN, et al., Defendants-Appellees.	) Appeal from U.S. District Court for the Eastern District of Wisconsin) No. 91-C-1269) Terence T. Evans Chief Judge

ORDER

Robert J. Eisenbart filed this action against State of

Wisconsin, the County of Racine, three judges and a court commissioner, pursuant to 42 U.S.C. 1983, challenging the Wisconsin domestic abuse Statutes(Wis. Stat. 813.12), after a two-year injunction was entered by a Wisconsin court, prohibiting Eisenbart from contacting Linda Masters, the Mother of Eisenbart's daughter. Eisenbart appeals from the district court's dismissal of the action as frivolous. For the reasons set forth in the attached order, the judgement of the district court is AFFIRMED.

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1. After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a statement as to Need of Oral Argument.

See Fed. R. App. P. 34(a); Circuit Rule 34(f). Appellant has filed such a statement and requested oral argument is denied and the appeal is submitted on the briefs and record.

Note: "attached order" in above order is Judge Evans' decision which follows.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

ROBERT J. EISENBART,
Plaintiff,

Civil Action No.
91-C-1269

v.

STATE OF WISCONSIN, RACINE COUNTY,
JUDGE RICHARD S. BROWN,
JUDGE DANIEL P. ANDERSON,
JUDGE HARRY G. SNYDER,
JUDGE STEPHEN A. SIMANEK, AND
COURT COMMISSIONER WILLIAM HONRATH,
Defendants.

ORDER

In this action, brought under 42 U.S.C. 1983, Robert J. Eisenbart, who is proceeding without a lawyer, has launched a wide ranging assault on Section 813.12, Wisconsin Statutes, which provides for domestic abuse restraining orders and injunctions. The State of Wisconsin, Judges Richard S. Brown, Daniel P. Anderson, and Harry G. Snyder of the court of appeals, and Racine County Circuit Court Judge

Stephen Simanek have filed numerous motions to dismiss the case.(f.n. 1). The motion included copies of Rule 56(e) and (f), informing Mr. Eisenbart that he must respond to factual assertions submitted by the movants. Independently of that, Mr. Eisenbart had submitted numerous exhibits in support of his claims. The motions will therefore be treated as motions for summary judgement.

f.n.1- They filed motions in response to the complaint. Then on December 16, 1991, Mr. Eisenbart filed an amended complaint. Motions were then filed to dismiss the amended complaint. The two remaining defendants, William Honrath, an assistant family court commissioner, and Racine County, have not moved to dismiss.

The record, as submitted by Mr. Eisenbart, reveals the following facts, which unless otherwise indicated are taken from Mr. Eisenbart's testimony at an injunction hearing before Judge Simanek on December 17, 1990. Mr. Eisenbart and Linda

Masters, who at the time was separated from her husband Darrell Masters, lived together for a time in 1987 and 1988. Mrs. Masters gave birth to a child, Emili. Soon after Emili's birth(6months), Mrs. Masters returned to her husband. Mr. Eisenbart initiated a paternity action and proved to the satisfaction of the court commissioner that Emili was his daughter. Mr. Eisenbart was granted joint custody of the child.

In Mid-May 1988, Mrs. Masters told Mr. Eisenbart that she wanted to move back in with him and to proceed with the divorce of her husband. She lived with Mr. Eisenbart for a short time(until 25 Jul 88). On June 6, 1988, the day of a previously scheduled hearing, a court commissioner granted Mrs. Masters and Mr. Eisenbart joint custody and joint placement of Emili, on the basis they were living together so that joint custody, in effect existed. The

relationship did not run smoothly, and Mrs. Masters apparently obtained counsel, without Mr. Eisenbart's knowledge, to seek sole custody of Emili.

On June 16, 1988, Mr. Eisenbart confronted Mrs. Masters, asking her whether it was true she intended to seek sole custody. There is a dispute over the extent of the violence(who was the aggressor) which occured during this encounter. Mr. Eisenbart testified that he locked himself in the bathroom; that Mrs. Masters called her estranged husband; that she left the apartment; and then Mr. Eisenbart then called the sheriff's department. Mrs. Masters alledged there had been violence. After this incident,(she stayed with Mr. Eisenbart until 25 July 1988), then returned to her husband.

During one of the court proceedings(Dec 1990), in this

matter Mrs. Masters contended and Mr. Eisenbart denied that he stated that he would fight to obtain custody of Emily," until one of us would have to die."

Ultimately, on March 8, 1989, the issue of custody was settled. The parties were given joint custody, but Mrs. Masters was given primary placement.

Following this, on May 27 and 28 of 1990, according to Mr. Eisenbart's testimony, Mrs. Masters contended that she had recieved some really strange anonymous phone calls at her home, where she was living with her husband calls which stated Mr. Eisenbart was going to kill her.

On October 16, 1990, a Detective McReynolds of the Racine County Sheriff's department went to the Masters' home. According to his report, the purpose of the visit was to inform Mrs. Masters that the sheriff's department had recieved anonymous

information through "Crime Stoppers" that Mr. Eisenbart had an alledged obsession to try to kill her.

Detective McReynolds warned Mrs. Masters to take Mr. Eisenbart's alledged threats seriously and advised her to obtain a temporary restraining order. An ex parte order was issued on November 7, 1990.

A hearing was held on 13 Nov, 1990 before Court Commissioner William Honrath, a defendant in this case. He issued a 1 year injunction against Mr. Eisenbart. Mr. Eisenbart requested a de novo review of the order. A Hearing was held on 17 December, 1990 beforte Judge Simanek. Judge Simanek found that reasonable grounds existed to believe that Eisenbart may have engaged in, or might engage in, domestic abuse directed toward Mrs. Masters. A 2 year injunction was issued, ordering Eisenbart to avoid her residence and avoid contacting her. The

order specifically allowed the exercise of periods of placement of his daughter Emili.

Mr. Eisenbart appealed the injunction to the Wisconsin Court of Appeals. On Sept 18, 1991, the court of appeals affirmed the trial court, found the appeal frivolous, and remanded the case for a determination of costs and reasonable attorney fees to be assessed against Mr. Eisenbart.

Mr. Eisenbart filed this action, pursuant to 42 U.S.C. 1983 on November 25, 1991. Here he alleges that the Wisconsin Domestic Abuse Statutue, Sec. 813.12, under which the injunction was issued against him, violates the United States Constitution in that it creates a Bill of Attainer and or a Bill of Pains and Penalties, it violates the first amendment, it violates his right to procedural and substantive due process and to the equal protection of the laws, and it violates his

seventh amendment right to a jury trial. He also claims that by refusing to allow him to tape record the court proceedings, both Commissioner Honrath and Judge Simanek protected the monopoly enjoyed by court reporters, in violation of the antitrust laws.

In response, the office of the attorney general, on behalf of the judges, filed four seperate motions raising approximately 19 seperate grounds for dismissial of the suit.
It is unclear to me why such a shotgun approach was used by either side.

Many of these issues raised by Mr. Eisenbart are unworthy of comment. For example, I will not delve into the issue regardiing a violation of either the due process clause or the antitrust laws based on the orders refusing to allow tape recordings of the court proceedings. There

simply is no cognizable claim.

Constitutional challenges to Sec. 813.12 have previously been considered by Wisconsin Court of Appeals in Schramek v. Bohren, 145 Wis. 2d 695(1988), and by Federal Judge Barbara Crabb in Blazel v. Bradley, 698 F. Supp. 756 (W.D.Wis. 1988). In Blazel, Judge Crabb determined that those provisions of the statute which allowed for an ex parte restraining order required that the petitioner make a showing of iminent danger of physical harm and therefore upheld the constitutionality of that part of the provisions.

In Schramek, the court of appeals considered a broader challenge to the statute and found that it withstood some constitutional challenge. Sometimes it is clear that the court was referring only to the Wisconsin constitution, not the U.S. Constitution, and sometimes it is not.

Insofar as either of those cases shed light on Mr. Eisenbart's claims, I am in agreement with them and would rule in the same manner in this case. However, a more funamental problem exists with the majority of Mr. Eisenbart's claims, which are due process claims.

The injunction of which Mr. Eisenbart complains orders that:

> The Respondent avoid the Petitioner's residence and or any premises temporarily occupied by petitioner now and in the future. The respondent avoid contacting or causing any person other that the party's attorney to contact the petitioner unless petitioner consents in writing. Contact includes contacts at work(they work same place), school, at public places, or by phone or in writing. Except for exercise of temporary periods of physical placement with child Emili.

The injunction specifically does not prohibit contact between Mr. Eisenbart and his child. Mr. Eisenbart's complaint does not contend that it does, although he states that his "rights to unfettered contact with his daughter by phone, right

to speak with mother concerning the daughter" have been violated. He does explain the legal source of his so called right to unfettered contact with his daughter. And, in fact, he has none. See Michael H. v. Gerald D., 491 U.S. 110 (1989).If such a right exists, then no custody order would be constitutional. Furthermore, if such a right existed, Mrs. Masters would be able to claim it also and demand contact with her daughter by phone unfettered by Mr. Eisenbart. The claim as it is stated, seems frivolous.

Even though it is not unfettered, Mr. Eisenbart may have liberty interest in attempting to maintain his relationship with his daughter. See Michael H.; Stanley v. Illinois, 405 U.S. 645 (1972); Quillon v. Walcott, 434 U.S. 246 (1978); Caban v. Mohammed , 441 U.S. 380 (1979): Lehr v. Robertson , 463 U.S. 248 (1983).

However that right has not been taken totally away from him by the injunction. Therefore, his substantive due process rights have not been interfered with. In addition, even if there were protected interest, nothing complained of regarding the injunction hearing rises to the level of procedural due process claim. Mr. Eisenbart had a hearing and the right to present evidence. The matter of which he complains, such as failure to allow someone to sit with him or allow tape recording of the proceedings, do not rise to constitutional dimensions.

The essence of the order of December 17, 1990, which is the order in effect, is to prohibit contact with Mrs. Masters. A fair reading of the complaint and of Mr. Eisenbart's testimony at the December 17, 1990, hearing indicates that it is not primarily the prohibition against

contact with Mrs. Masters of which he complains. The question must arise as to what right or liberty interest Mr. Eisenbart has with or without the order--to contact with Mrs. Masters. It is true that she is the mother of his child and they share custody. However, she is also Darrell Masters' wife. She and Mr. Eisenbart do not own property together. They were not living together-- in fact she was living with her husband--when the injunction was issued. Yet Mr. Eisenbart claims that in the process of issuing the order, and affirming the order, the judges who are defendants in this case were violating his constitutinal rights. The constitution does not go so far as to grant the right to force one's presence on another person, say nothing of their spouse, even if the other person is the parent of his or her child. It does not provide Mr. Eisenbart

with the liberty interest in contact with someone he onced lived with, but now lives with her husband, to whom she was divorcing during the time she lived with Mr. Eisenbart. Because he has no liberty interest in maintaining a relationship with Mrs. Masters, Mr. Eisenbart cannot maintain a 14th amendment claim.

As to the remainder of his claims, most do not deserve comment. He has no right to a jury trial in equitable proceedings. Furthermore, the State is not a proper defendant because it is not a person within the meaning of the word as used in 1983. Will v. Michigan Dept. of Police , 491 U.S. 58 (1989). The judges and the court commissioner have absolute judicial immunity from damages in this situation. Stump v. Sparkman, 435 U.S. 349 (1978). Mr. Eisenbart does not maintain a claim for loss of reputation. Paul v.

Davis, 424 U.S. 693 (1976).

Racine county and Court Commissioner Honrath, as I noted in footnote 1, have not moved for dismissial. However, they will be dismissed on my own motion. There are allegations against the county. The County cannot be sued simply because it employs Commissioner Honrath. See Monell v. New York City Dept of Social Services, 436 U.S. 658 (1978). Commissioner Honrath issued an order in this case but it was superceded by the one issued by Judge Simanek, which is the order currently causing Mr. Eisenbart's complaints. Commissioner Honrath's action cannot now be enjoined and he is immune from a claim for damages.

For all the foregoing reasons, this action is DISMISSED.

SO ORDERED at Milwaukee, Wisconsin, this 18th day of February, 1992.

BY THE COURT:

_____

TERRENCE T. EVANS
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Robert J. Eisenbart
Plaintiff,

vs.

State of Wisconsin
Defendant,
and

Racine County
Defendant,
and

Hon. Richard S. Brown
Appellant Court Judge,
District 2
personally and in his
official capacity,
Defendant,
and

Hon. Daniel P. Anderson
Appellant Court Judge,
District 2
personally and in
his official capacity,
Defendant,
and

Hon. Harry G. Snyder
Appellant Court Judge,
District 2
personally and in
his official capacity,
Defendant,
and

Hon. Stephen A. Simanek

Circuit Court Judge,
Racine County
personally and in
his official capacity,
Defendant,
and

William Honrath
Asst. Family Court Commissioner
Racine County
personally and In
his official capacity
Defendant,

FIRST AMENDED COMPLAINT

The plaintiff, in propria persona, in the above submits the following as his first amended complaint:

COMPLAINT

This action is authorized by 42 U.S.C. Sec. 1983 and seeks a declaratory judgement in validating that part of the Wisconsin Statutes which allows issuance of temporary restraining orders and permanent injunctions in spouse/family member abuse actions without permitting discovery, permits issuance of permanent injunction by court

commissioners, fails to permit a jury trial, fails to provide for procedural safeguards, is void for vagueness and overbreadth and procedurally denies a defendant/respondent a meaning full hearing in a meaningful manner.

This plaintiff further challenges the customs, practices and policies of the circuit court judge that denies a non attorney litigant the right to tape record the proceeding, right to hire a Notary to tape record thee proceeding, denies the litigant the right of a secretary at counsel table of which are indirect violation of the protected due process rights of the litigant.

The plaintiff further complaints that the three appellate court judges failed to provide him equal protection under the law when they failed to most liberally construe his appeal.

JURISDICTION

Jurisdiction is invoked pursuant to and in accordance with the provisions of 28 U.S.C. Sections 1331, 1343 and further the authority the court will rely upon for the issuance of a declaratory judgement and further relief are 28 USC 2201, 2202 and Rule 57 of the FRCP. This action arises under 42 U.S.C. 1983 and the court's authority to grant attorney fees is pursuant 42 USC 1988 for violations of the plaintiff's rights as guaranteed by ART 1, SEC 9, CL 3, ART 1, SEC 10, CL 1 & of the Constitution of the United States including buy not limited to the 1st, 5th, 7th, Amendment incorporated by the 14th Amendment. In addition jurisdiction is invoked under 15 USC Sec. 1-7, 15, 22, 26 & 35, and 18 USC 2511(D) and Pendent lite jurisdiction under Chapter 133 of the Wisconsin Statutes, most specifically 133.01, 133.02 & 133.03. Finally, the right to a

jury trial, in civil matters, is guaranteed by the Wisconsin Constitution, Article 1, Section 5.

VENUE

Venue in this matter is properly placed in the United States District Court, Eastern District Court of Wisconsin, in that all acts complained of herein arose and occurred in the southeastern counties of the State of Wisconsin.

PARTIES

The State of Wisconsin is the employer of the Appellate Judges and the Circuit Court Judge.

Racine county is a political subdivision of the State of Wisconsin and the employer of the defendant, Family Court Commissioner William Honrath.

The parties, Hon. Richard S. Brown, Hon. Daniel P. Anderson, Hon. Harry G. Snyder are all Appellate Court Judges, Dis-

trict 2 in the State of Wisconsin and are named personally and in their official capacities.

They are all State of Wisconsin employees.

The party, Hon. Stephen A. Simanek, is a Circuit Court Judge for Racine County is named personally and in his official capacity. He is further an employee of the State of Wisconsin.

The party, William Honrath is a assistant family Court Commissioner and is employed by the county of Racine. He is named personally and in his official capacity.

FACTUAL ALLEGATIONS

1. On 11-7-90, Linda Masters, hereinafter Masters, filed a petition for a temporary restraining order barring the plaintiff, hereinafter, Eisenbart, from contacting her. The petition also sought a permanent injunction

baring the same contact, see [exh 1].

2. Attached to the 11-7-90 petition was an affidavit [Exh 2] in which Masters stated she received anonymous calls at her residence for the last 6 months warning her of a threat by Eisenbart. The affiant further stated she had been contacted by the Racine County Sheriff's Department warning her of a similar anonymous warning they had received.

3. On 11-13-90, a hearing was held before Assistant Family Court Commissioner William Honrath.

4. On 11-13-90, Eisenbart requested to have a notary audio record the proceedings, a stenographer make a stenographic record of the proceeding, right to call witnesses and to adjourn the proceeding to contact the Chief Judge to resolve the private record question.

5. Commissioner Honrath denied Eisenbart the short adjournment and advised Eisenbart that the hearing was going to be closed to the public, denied the right to have the witnesses in the court room, without any justification, and that he should immediately enter the room or he would proceed without him. The Commissioner further refused to explain to Eisenbart the reason for his denials stating, "I do not want to hear any of that authority garbage."

5a. It is the custom, practice and policy for the family court commissioners and judges, in Racine County and the State of Wisconsin, to permit attorneys to bring private court reporters into the hearing rooms to make a record. 6. The court commissioner issued a one year permanent injunction

[exh 3] barring Eisenbart from con-

tacting Masters anywhere, by any means or anytime without going through her attorney. In addition, he was barred from contacting his daughter, in any manner, while she was with Master's in her home or anywhere.

7. On 11-21-90, Eisenbart filed a motion, with an attached affidavit, for a hearing De Novo hearing which was scheduled to be heard on 12-17-90 before the Hon. Stephen A. Simanek. The motion sought to have the injunction statute 813.12 declared unconstitutional, a finding of the original action by Masters to be frivolous, an adjournment for discovery and depositions, a vacation of the temporary restraining order, a vacation of the permanent injunction issued by the family court commissioner, a request for a notary and Eisenbart himself to be able to make a audio record of the

proceeding and a secretarial assistant at counsel table. Eisenbart also demanded a jury trial, see [exh 4].

8. On 11-26-90, Eisenbart requested Commissioner Honrath and Judge Simanek stay the permanent injunction issued by Commissioner Honrath. They both refused, see [Exh 5 & 6].

9. On 11-27-91, Eisenbart filed a motion in limine to bar the totem pole hearsay of the Sheriff Department's report and any other unsubstantiated allegations of Masters, see [Exh 7].

10. On 12-17-90, a hearing was conducted by Judge Simanek on the above captioned matter. The court denied all of Eisenbart's motions [Exh 8 & 9] and granted a new 2 year injunction [Exh 10].

11. On 12-20-90, Eisenbart filed a notice of appeal, [Exh 11] and filed his

brief in chief [Exh 12] on 5-6-91. Masters filed her response [Exh 13] and Eisenbart filed his reply [Exh 14].

12. On 9-18-91, the Court of Appeals, Justices Brown, Anderson & Schneider issued their opinion, [Exh 15]. The Appellate Court Judges ignored several of Eisenbart's arguments and most of his case law. They failed to most liberally construe his brief, found him frivolous and remanded the matter to the circuit court for a determination of attorney fees to be assessed against him. The appellate court judges erred when they stated, in their decision, that the vagueness and overbreadth constitutional challenges raised by Eisenbart, were previously determined by the Schramek case, 429 N.W2d 501, and other misapplied case

law [Exh 18] and further paid no attention the decision of Justice Crabb of the Western District Federal Court of Wisconsin. Her decision in Blazel V Bradley, 698 F. Supp 756, stated there was no reason to create a special class, court commissioners fail to meet judicial participation requirement for due process, and further, she states in her decision that no one is challenging the constitutionality of the suspect statute, in Federal Court, page 760 [Exh 19].

12a. Eisenbart filed a Petition for Review [Exh 16 & 17] to the Wisconsin Supreme Court of the court of appeals Decision on 10-21-91. The Petition was rejected as untimely. The untimeliness event was due to a communication problem with the Supreme Court Clerk and Eisenbart's lack of

knowledge and experience in appellate work.

13. On 11-5-90, Masters' attorney filed a motion seeking $5,788 judgement against Eisenbart. This judgement, if granted, will cause Eisenbart to file bankruptcy and the damage will be permanent and irreparable.

FIRST CAUSE OF ACTION

14. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 13 of the complaint. 15. The domestic abuse statute, 813.12, violates the United States Constitution, Article 1, Sec. 9, Clause 3 as incorporated by the Article 1, Section 10, Clause 1 when it creates a Bill of Attainder and/or a Bill of Pains and Penalties. The above referred to Bills are prohibited.

15a. The 813.12 statute is unconstitution-

al due to violations to the vagueness & overbreadth doctrines.

16. The plaintiff's constitutional rights were violated when the court procedure failed to provide a fair judicial proceeding when the court denied Eisenbart the adjournment, thus, sufficient time for discovery to preserve evidence for trial, the right to which would enable the accused plaintiff to have a meaningful hearing, at a meaningful time in a meaningful matter.

16a. It is the custom, practice and policy, that once a temporary restraining order is issued under the domestic abuse statute, pursuant to 813.12, the court commissioners and judges will automatically issue the permanent injunctions regardless of evidence or lack of it.

17. The suspect statute and procedure are

unconstitutional.

18. The plaintiff's liberty interests, rights to unfettered contact with his daughter, right to speak with the mother concerning the daughter, right to travel freely, right to frequent social establishments freely, right to work within his employment freely, because the nature of the injunction, ie. overbreadth and vagueness, restricts all of the above rights merely by the presence of the mother, have been wrongfully taken from him and he has been damaged financially in amounts to be determined in excess of $10,000 to defend himself, emotionally through the stress it has caused the plaintiff, at work and in his community, by the public knowledge of the existence of the injunction and his reputation has been per-

manently damaged by the fact that his employer now questions his ability to provide a safe environment for the patients under his charge.

19. WHEREFORE, the Plaintiff requests the declaratory relief and damages as stated in the closing wherefore clauses.

SECOND CAUSE OF ACTION

20. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 18 of the complaint. 21. The 2 year domestic abuse injunction, when issued by the court, violated the plaintiff's 1st Amendment Rights when it impacted the plaintiff's rights to unfettered contact with his daughter, right to speak with the mother of his daughter concerning the daughter, right to travel freely, right to frequent social es-

tablishments freely, right to work within his employment freely and all other lawful activities.

22. The plaintiff has been caused loss of phone contact with his daughter. The parenting responsibilities of the plaintiff have been impacted by the requirement of a third party contact between parents.

22a. This damage is financial, emotional and reputational.

23. WHEREFORE, the Plaintiff demands the declaratory relief and damages as set for the in the closing wherefore clause.

THIRD CAUSE OF ACTION 24. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 22 of the complaint.

25. The plaintiff's procedural and substantive rights of due process, as

guaranteed by the 5th and 14th amendments of the U. S. Constitution, of the plaintiff were violated. The rights violations referred to are incorporated by reference in the opening paragraphs.

26. The judge's denial of an adjournment and ample time to conduct discovery to preserve evidence, was a denial of the plaintiff's right to prepare for a meaningful hearing in a meaningful manner at a meaningful time.

26a. It is a custom, practice and policy of the court commissioner and judges to permit attorneys adjournments upon request and all of the time necessary to prepare for hearings and do discovery.

26b. The plaintiff was denied the right to have a secretarial assistant at counsel table who is a fellow member of a civil

rights group.

26c. It is the custom, practice and policy of the Wisconsin court System to permit lawyers to have a secretarial assistants, paralegals, law clerks and any other assistants they want at counsel table during the proceedings.

27. The plaintiff's livelihood, integrity and reputation have been impacted. The plaintiff's occupation as a registered nurse, at a facility for the developmentally disabled, require that he maintain an impeccable record as a caretaker. The false allegations that were used to obtain the injunction have also placed questions in minds of the plaintiff's employer as to his ability to protect and provide a safe and healthy environment for the residents under his care. His future financial upward mobility in the mental

health care field has been impacted.

28. WHEREFORE, the Plaintiff demands the declaratory relief and damages that is outlined in the final wherefore clauses.

FOURTH CAUSE OF ACTION

29. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 26 of the complaint. 30. The plaintiff's 7th Amendment Right under the U. S. Constitution and the Wisconsin Constitution, Article 1, Section 5, to a jury trial were violated when he was denied a jury.

30a. All violations of 813.12 are also covered in criminal statutes for which an accused is entitled to a jury trial.

31. The suspect statute fails to provide for a jury and the circuit court's decision that the issue was a matter of

equity foreclosed the plaintiff's right to a jury.

31a. Judge Simanek issued the TRO and also heard and issued the permanent injunction. He was not a fair and impartial trier of the fact.

31b. An elected judge, in the State of Wisconsin, is subject to the overwhelming voting power of the highly organized women, and thus, cannot be a fair and impartial trier of the facts on domestic abuse issues. Only a jury of an individuals peers can provide the necessary elements of due process.

32. The plaintiff has suffered loss of liberty and other damages, incorporated by reference from the above paragraphs, as a result of the suspect statute, Judge Simanek and Asst. Family Ct Comm. William Honrath's

decision.

33. WHEREFORE, the plaintiff demands the declaratory relief and damages as requested in the final wherefore clauses.

FIFTH CAUSE OF ACTION 34. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 30 of the complaint.

35. The Judges named in this complaint are all State of Wisconsin employees.

36. The Circuit Court Judge and the Appellate Court Judges held the plaintiff to the same high standards they would have held an attorney, in so doing, they failed to most liberally construe the pleading of the unrepresented, non attorney plaintiff in direct contravention of the controlling case law and standards as set forth by the United States Supreme Court in

Haines v Kerner, 92 S. Ct. 594. The Haines case is defines the responsibility of all inferior court. The plaintiff is entitled to fundamental fairness as guaranteed by the 5th amendment and incorporated by the 14th amendment of the U.S. Constitution.

37. The State of Wisconsin is responsible for the acts of its employees.

38. The plaintiff has lost his liberty interest and sustained other damages as a result of the conduct of the above named defendant Appellate Judges, Circuit Court Judge and Ct. Commissioner. The loss of liberty and damages, referred to above, are incorporated by reference from the paragraphs in the previous portions of the complaint.

39. WHEREFORE, the Plaintiff demands the

declaratory relief and damages as outlined in the final wherefore clauses.

SIXTH CAUSE OF ACTION

40. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 34 of the complaint. 41. The plaintiff was denied the right to use a tape recorder during the court proceedings which is violation of the antitrust laws as outlined in 15 USC, Sec 1-7, 15, 22, 26 & 35 and 18 USC 2511(d) and the antitrust laws as set forth in chapter 133 of the Wisconsin Statutes, most specifically 133.01, 133.02 & 133.03. The Federal Courts have original jurisdiction on all anti trust actions.

41a. Judge Simanek and Comm. Honrath posses no lawful legislated authority to preserve and protect the monopoly that the court reporters have.

42. Ct. Comm. Honrath and Judge Simanek

denied the plaintiff the rights to use a tape recorder at 2 separate hearings. They both further denied the plaintiff the right to have a Notary audio record the proceedings and Comm Honrath further denied the plaintiff the right to have a private court reporter record the proceeding.

43. The Ct reporter, under Comm. Honrath's control, selectively recorded the hearing and testimony of Masters. Comm. Honrath subsequently issued a 1 year injunction based on a skewed record against the plaintiff. Wisconsin Supreme Court Rules permit court commissioner and judges to control the recording and content of the court proceedings. The plaintiff was denied a full record of Master's testimony in the commissioner's hearing.

44. The plaintiff was forced to buy a non

verifiable transcript at a fixed and inflated price in order to continue on with his due process rights of a De Novo hearing and of an appeal. The plaintiff was also denied the instant replay of the proceedings. He was also denied the right of refreshment of the proceeding prior to making a decision to purchase the transcript. The plaintiff was forced to pay in advance for the transcript.

45. WHEREFORE, the Plaintiff demands the declaratory relief and damages as set forth in the final wherefore clause of this complaint.

SEVENTH CAUSE OF ACTION

46. The plaintiff realleges and incorporates by reference as though fully set forth herein paragraphs 1 through 38 of the complaint. 47. The custom, practice and policy of issuing a permanent

1 or 2 year injunction, as was issued against the plaintiff, is a direct violation of the equal protection clause as guaranteed under the 5th and 14th amendment of the U. S. constitution.

48. The plaintiff is a member of a disfavored class, being an individual/parent who has lived with someone in the past or present. He is unable to escape his parental responsibilities. All other citizens accused of a similar allegations are given their full due process procedural rights under criminal law.

49. The legislature has created an identical set of laws, while laws already exist under the criminal statutes. The disfavored class that is unable to escape their parental responsibilities and have been stripped of their procedural due process rights

which they would have under criminal law.

50. The plaintiff has lost his liberty interests, sustained financial damages, emotional damages and has sustained other damages as a result of the conduct of the above mentioned defendants and their employees.

51. WHEREFORE, the Plaintiff demands the declaratory relief and damages as set forth in the final wherefore clauses.

As a result of the above mentioned causes of action and the damages sustained by the plaintiff the following relief is requested.

52. A temporary and permanent injunction barring the Hon. Steven Simanek, William Honrath, Family Court Commissioner and their successors from granting Linda Masters or her attorney, Thomas Koss, attorneys fees or from proceed-

ings with any further judgement collection activity until this matter is decided by the federal court on the issues.

53. A Declaratory judgement finding that portions, or all, of the Wisc. Stat. 813.12 are unconstitutional.

54. A Declaratory judgement finding that, Hon. Stephen Simanek and Fam. Ct. Comm. William Honrath, the Circuit Court Judge and Family Court Commissioner issued a temporary order and a permanent injunction without meeting the criterion listed in the suspect statute.

55. A Declaratory judgement finding that Wis Stat. 813.12 is unconstitutional when it permits a family court commissioner, who does not satisfy the judicial participation necessary to fulfill the due process requirements as

required by the constitution when issuing either temporary restraining orders or permanent injunctions, to issue tro's and permanent injunctions.

56. A Declaratory Judgement finding that Wisc Stat. 813.12 is unconstitutional because it fails to provide the procedural safeguards necessary to allow an accused to conduct discovery and depositions to preserve evidence and to allow sufficient time to prepare for a meaningful hearing in a meaningful manner at a reasonable time.

57. A Declaratory Judgement finding that Judge Simanek and Court Commissioner Honrath violated Wis. Chapter 133 and 15 USC, sec. 1-7 & 18 USC 2511 (d), when they denied Eisenbart, a.) The right to make a private audio record of the proceeding, b.) The right to have a notary make a audio recording

of the proceeding, c.) The right to have a private stenographer make a stenographic record of the proceeding, d.) a secretarial assistant at counsel table, and by doing so Eisenbart was forced to purchase a non verifiable content controlled transcript of the proceeding at a fixed and inflated price.

58. A Declaratory Judgement finding that the parties, Hon. Richard S. Brown, Hon. Daniel P. Anderson, Hon. Harry G. Snyder, all Appellate Court Judges, District 2 in the State of Wisconsin, failed to most liberally construe the briefs of the non attorney and non represented plaintiff.

58a. A Declaratory Judgement finding that the parties, Hon. Stephen Simanek and William Honrath, failed to most liberally construe the pleadings of the non

attorney and unrepresented plaintiff.

59. A Judgement for compensatory damages against the defendants, State of Wisconsin, Racine County, Hon. Stephen Simanek, William Honrath, jointly and severally, in an amount to be determined by a jury.

60. A Judgement for punitive damages against he defendants, State of Wisconsin, Racine County, Hon. Stephen Simanek, William Honrath, jointly and severally, in an amount to be determined by a jury.

61. A Judgement against all of the defendants, jointly and severally, for the actual attorney fees, paralegal fees and for the time spent prosecuting this action at a fair market value.

62. A judgement for treble damages as provided by Wisconsin Statute and U.S. Code for the violations of the anti

trust laws against the following defendants, State of Wisconsin, Racine County, Hon. Stephen Simanek, William Honrath in an amount to be determined by a jury. In addition, the court is to grant any additional appropriate relief as is available under Chapter 133 of Wis. Statute.

I have read the above and it is true and correct.

_____
Robert Eisenbart, in Propria Persona

Suscribed and sworn to before me this 16th day of Dec., 1991

_____
Notary Public my commissions expires 9-13-92

This complaint is dated December 16, 1991

_____
Robert Eisenbart, In Propria Persona

Sturtevant, WI

PURSUANT TO RULE 38 OF THE FEDERAL RULES OF CIVIL PROCEDURE THE PLAINTIFF

HEREBY DEMANDS A TRIAL BY JURY OF 12

No. 90-2897

STATE OF WISCONSIN IN COURT
OF APPEALS DISTRICT II

LINDA MASTERS,
Petitioner-Respondent,

v.
ROBERT J. EISENBART
Respondent-Appellant.

APPEAL from an order of the circuit court for Racine County: STEPHEN A. SIMANEK, Judge. Affirmed, but cause remanded with directions.

Before Brown and Anderson, JJ., and Circuit Judge Harry G. Snyder, acting.

SNYDER,G. Robert J. Eisenbart appeals pro se from an order granting Linda Masters a two-year domestic abuse injunction against him. On appeal, Eisenbart challenges the constitutionality of the TRO and injunction statutes and raises numerous other issues as well. We are persuaded by none of his arguements,

and so affirm the trial court in all respects. In addition we conclude the appeal is frivolous and remand the case for a determination of attorney's fees.

Eisenbart and Masters lived together for several months in 1987 and 1988. A child was born as a result of that relationship. 6 months after the birth of their daughter, the relationship between Masters and Eisenbart ended and Masters returned to live with her husband for 3 days, from whom she had been seperated and not yet divorced. Eisenbart, adjudicated the father by his own paternity action, was granted joint custody and liberal physical placement of the little girl. Masters moved back in with Eisenbart on May 11 1988. Masters testified at the Dec 1990 injunction hearing that Eisenbart threatened her after the May 88 custody hearing that he would do anything it took

to get joint custody. If he had to prove me unfit, there is[sic] ways to do that.... He said he would do anything, spend any amount of money and fight until one of us died. In June 1988, the police were summoned by Eisenbart to their apartment to settle a domestic dispute, but noone filed charges. Masters moved out 25 July 88 permanently. In May 1990, Master alledged she began getting anonymous phone calls stating that "Bob was going to kill her". The following 16 Oct 90, the Racine County Sheriff's Department "Crimestoppers" line received an anonymous tip that Eisenbart may be trying to kill Masters. The officer who informed Masters of that call warned her to take the threat seriously and advised her and her husband to get a TRO. An ex parte TRO was issued on November 7, 1990.

Eisenbart appeared pro se at the injunction hearing, held November 13, 1990

before a family court commissioner. The hearing resulted in a 1-year injunction being entered against Eisenbart. Per Eisenbart's request, de novo review of the matter took place on December 17,1990 beforte the Hon. Stephen A. Simanek. Eisenbart's numerous procedural requests relating to discovery, costs of transcripts, recording the proceedings, and assistance at counsel table were denied. In addition, the trial court issued a 2-year injunction against Eisenbart, finding reasonable grounds to believe that Eisenbart may have engaged in, or based upon his and Masters prior conduct, might engage in domestic abuse with Masters. The injunction ordered Eisenbart to avoid Masters' residence and to avoid contacting her or causing anyone other than her attorney to contact her. The no-contact provision expressly excepted "exercise of

periods of physical placement" with the child. Eisenbart appeals the issuance of the injunction as well as the denial of his procedural requests.(1)

A. Constitutionality

The first issue involves the domestic abuse restraining order and injunction statute, Sec. 813.12 Stats. Eisenbart contends that the statutue is unconstitutional on its face and as applied to him because it is an unreasonable, ineffective and irrational means to effectuate a statutory purpose; deprives him of liberty interests in being left alone, his family contact, and reputation; results in cruel and unusual punishment; and somehow violates fundamental rights implied in the Ninth Amendment to the United States Constitution.(2) We are pursuaded by none of his constitutional challenges.

In passing on the constitutionality of a statute, we recognize that there is a presumption that the legislative enactment is constitutional. Schramek v. Bohren, 145 Wis 2d 695,702, 429 N.W. 2d 501,503 (Ct App. 1988). The burden is on the challenger to establish that the act, and its application, are unconstitutional. Oliver v. Travelers Ins. Co. 103 Wis. 2d 644,647, 309 N.W. 2d 383, 385(Ct App. 1981).

(1) As noted, Eisenbart appeared pro se throughout the proceedings leading to his appeal and appeals pro se as well. We are mindful that pro se litigants are held to less stringent standards than those applied to expertly trained members of the legal profession. Bates v. Jean, 745 F.2d 1146 1150(7th Cir 1984).

(2) Eisenbart also briefly addresses equal protection claims. He attempts to support it with due process reasoning, leaving us unwilling to discern the gist of the argument. Constitutional points merely raised but not adequately argued, will not be reviewed. Dumas v. State, 90 Wis. 2d

518,523 280 N.W. 2d 310,313(Ct. App.

1979).

Sec 813.12, Stats. already has been determined to be constitutional on some grounds of equal protection, Schramek, 145 Wis. 2d at 712, 429 N.W. 2d at 507, and some due process. Id.; Blazel v. Bradley , 698 F.Supp 756,757(W.D.Wis 1988). Nonetheless, Eisenbart reasserts arguements here without addressing clearly why the existing law should be changed. He also contends that Sec. 813.12 Stats., is unconstitutional as applied to him. He claims that to remove any man from his home, children, and property for a period of 2 years as a result of an argument(which took place over 2 years prior to the removal) fails a strict scrutiny analysis because no compelling state interest overrides such infringement of their fundamental rights.

This argument, too is unavailing.

First, Eisenbart was not removed from his home. He and Masters already were living apart when the injunction was issued. By forbidding Eisenbart to contact Masters at her residence, the injunction kept him from her home and his daughter, not his. Eisenbart has no property interest in the Masters' home. Second the injunction did restrict Eisenbart's access to his daughter(by phone). However on the contrary, the document explicitly stated that the no-contact provision applied to only Masters, not the child. The trial court also emphasized that the injunction was not to curtail Eisenbart's contact (placement) with his daughter:

> I'll order that Mr. Eisenbart have no contact with the petitioner, Ms. Masters, at her home...at work...or any other place. No telephone calls, no letters, no face to face except for, and this is a big exception, ecept for the placement as arranged through the family court commissioner's office, the periods of physical placement that

> Mr. Eisenbart has with his daughter... The court certainly does not intend in any way to interfere with Mr. Eisenbart's exercise of his rights relating to periods of physical placement/ and parenting of the child. But that the only contact that there can be between Mr. Eisenbart and Ms. Masters. (Emphasis added)

Third, we reject Eisenbart's claim that the injunction unconstitutionally deprived him of his good name(and loss of promotion potential). Injury to one's reputation in itself is not constitutionally protected because reputation alone is neither liberty(nor property) within the meaning of the due process clause of the fourteenth amendment or the first amendment. Weber v. Cederburg, 129 Wis. 2d 57, 73, 384 N.W. 2d 333, 341 (1986). Consequently, Eisenbart's constitutional challenges based on equal protection and due process appear meritless.

Likewise Eisenbart's eighth amendment

challenge fails. He asserts that the actual loss of liberty interests(ie. contact with daughter by phone, right to work with Masters, and right to frequent public places even if Masters is there) for 2 years and the potential penalties for an alleged violation(nine months in jail and/or a $1000 fine) constitute cruel and unusual punishment. We already determined that the terms of the injunction cause him loss of liberty interest.

Regarding the potential penalties, Eisenbart has failed to establish that this civil penalty is so punitive as to be like criminal in nature. See United States v. Ward, 448 U.S. 242, 248-49(1980).

Finally, Eisenbart turns to the ninth amendment as an implicit source of all unnamed fundamental rights of which he claims the injunction statute strips him. Citing any legal authority, Eisenbart

asserts:

> "There exists no purely objective set of criteria to determine what rights are protected under the Ninth Amendment. Simply because the criteria are loose however, does not mean that the rights do not exist. The burden of proof is on the state to establish that the individual does not have the right involved under the Ninth Amendment."

If Eisenbart is referring to the previously discussed fundamental rights(to be left alone), we reiterate that the injunction issued under Sec. 813.12 Stats., causes him no deprivation of those rights. If he referes to some other rights, he has not made clear to us what those rights are, making it impossible for us to determine whether such rights were abridged or even exist. In either case his claim fails.

B. Issuance of TRO

Eisenbart next contends that even if the TRO statute is constitutional its ex parte issuance was erroneous because

Masters' petition lacked one of the necessary elements. See Sec. 813.12 Stats. Specifically, he claims it lacks allegations of imminent danger. See Blazel , 698 F. Supp. at 765.

Only the risk of immeadiate harm justifies the issuance of an ex parte TRO. Id. Masters' petition for the restraining order, which incorporated by reference the "Crimestoppers" anonymous information, alleged that during a fight over the custody of their child(2 1/2 years earlier) Eisenbart had threatened Masters that he would fight for custody"until one of us died." The petition also alleged that 6 months previous Masters and her husband had received anonymous telephone calls stating that "Bob was going to kill Masters", and that the Racine County Sheriff's Department had received anonymous information that Eisenbart had "an

obsession of trying to kill her." Finally the petition alleges that on the same day the petition was filed, Masters had seen Eisenbart behind her in his car. We conclude these constitute sufficient allegations of imminent harm to justify the issuance of a TRO pending a future hearing.

C. Adjournment Motion

On November 21, 1990, Eisenbart filed a motion for de novo review of the injunction hearing. The motion specifically requested that the de novo hearing be held as soon as the matter can be heard." Later in the hearing, Eisenbart requested an order adjourning the proceedings to allow sufficient time for discovery. The portion of Eisenbart's motion which requested a de novo hearing on Decembewr 17,1990 was granted, the portion seeking an adjournment was denied.

The granting of an adjournment is discretionary with the trial court. Hales Corners Sav. & Loan Ass'n v. Kohlmetz, 36 Wis 2d 627,634, 154 N.W. 2d 329,333(1967). Eisenbart complains that the adjounment request denial deprived him of his previously asserted liberty interests]nd of an opportunity to fully prepare for, and thus of his due process right to, a meaningful hearing.(3) We are not pursuaded. First, the motion contained mutually exclusive request provisions: that a hearing be held on Dec 17, and that it be held after that day. Both requests could not be granted by motion. Secondly, we already have discussed and rejected Eisenbart's claim that any fundamental rights were abridged. Third, without more specific statement as to how the denial of the adjournment might prejudice him(other

than need for discovery), we also must reject his contention that without an adjournment he would be forclosed from receiving a meaningful hearing. See Id. Accordingly, we cannot say that the trial court abused its discretion in denying the adjournment.

(3) Alleging that "Mrs. Masters lives a deceitful life", Eisenbart also contends that adequate discovery "is necessary to pin down a deceitful person for the purposes of impeachment" and to curtail " the abuse that takes place... in the restraining order and injunction area of civil law. These assertions are without proof in the record. Furthermore, he did not cite them in his request as a basis for granting the adjournment. We need not consider them. See Jenkins v. Sabourin, 104 Wis. 2d 309, 313-14, 311 N.W. 2d 600, 603 (1981).

D. Motion to Vacate TRO and Permanent Injunction

The TRO, signed by Judge Simanek, was issued on Nov 7, 1990. At an injunction hearing on Nov 13, a fammily court commissioner issued a 1 year injunction.

Eisenbart then petitioned the trial court to vacate the TRO and injunction, assertiing that the orders were issued pursuant to an unconstitutional law without reasonable grounds.

On appeal, however, Eisenbart attacks the trial court's refusal to vacate the TRO on the basis that there were no reasonable grounds upon which to issue it in the first instance and that Masters failed to establish imminent harm. He challenges the refusal to vacate the 1 year injunction on the grounds that a court commissioner does not have the judicial power to issue permanent injunctions.

Ordinarily, an appellate court will not examine contentions raised for the first time on appeal. Wengerd v. Rinehart 114 Wis. 2d 575,580,338 N.W.2d 861, 865 (Ct App. 1983). Eceptions are made to that general rule, however, because it is one of

judicial administration, not of this court's power to act. Wirth v. Ehly, 93 Wis. 2d 433,443-44, 287 N.W. 2d. 140, 145-146(1980). Since the issues involve statutory challenge interpretation and therefore are questions of law, we will address them. See id. at 444, 287 N.W. 2d at 146. As to his contention that a court commissioner lacks the judicial authority to issue a permanent injunction, Eisenbart is mistaken. Section 813.12(4)(a), Stats. plainly states that a judge or commissioner may grant an injunction See Blazel. As to whether the statutory prerequisites were sufficiently satisfied for the TRO to issue, we conclude they were. See Sec. 813.12(3) Stats. Masters' petition for the TRO alleges that during a custody fight over their child (2 1/2 years previous), Eisenbart had said he would try to gain custody "until one of us dies" that she

had seen Eisenbart behind her in his car that she had recieved anonymous telephone calls stating Eisenbart was going to kill her (6 months previous), that she had an unlisted phone number, and that the Racine County Sheriff's Department also recieved an anonymous report that Eisenbart was going to kill her(1 month before). The risk of imminent and irreparable harm were sufficiently established. See Blazel, 698 F.Supp at 757. E. Tape Recording of Proceedings

Eisenbart next contends that on several grounds, he was wrongly prohibited from tape recordiing the proceedings. He asserts that he can afford neither the cost nor the turnaround time necessary to obtain an official transcript, that the prohibition violated antitrust laws, and that he was now forced to purchase

and rely on the non verifiable quality of the transcript. We are pursuaded by none of these claims.

The conduct of a judicial proceeding is largely within the discretion of the trial court and its detemination will not be disturbed unless the rights of the parties have been prejudiced. Dutcher v. Phooenix Ins. Co. 37 Wis. 2d 591, 606. 155 N.W. 2d 609,617(1968), see also Wis SCR 61.01. Both the initial injunction hearing and the de novo hearing were transcribed in standaard fashion by a certified court reporter. Also, the trial court explained to Eisenbart tha the court reporter's record was the official record and would be available to Eisenbart. The court also explained to Eisenbart why his legal authority did not support his position.(4). Eisenbart has established no prejudice?

As to the antitrust claim, Eisenbart

makes only broad assertions which are more in nature like legal conclusions. We will not consider conclusory like propositions which are neither developed nor accompanied by strong argument or references to legal authority. Riley v. Town of Hamilton 153 Wis 2d 582,588, 451 N.W. 2d 454, 456(Ct. App. 1989).

F. Non-Lawyer Assistant at Counsel Table

Eisenbart is a member of a civil rights group, Divorced Dads Against Discrimination(DDAD). The trial court refused his request to have a fellow DDAD member, a notary, act as a secretary and assist to him at counsel table.

(4) In the trial court, Eisebart relied on Forsythe v. Family Court Commissioner 131 Wis.2d 322, 338 N.W. 2d 580 (1986). The trial court explained that Forsythe involved the recording of a proceedings before a famly court commissioner, which were not of record. Despite the trial court's explaination to him why Frosythe did not apply, Eisenbart persists in relying on it on appeal.

The court did tell Eisenbart however

that the DDAD member could "sit behind you if he wants and you can dicuss with him if you want during the proceedings, but if he comes forward from the railing and sits at your table, then he subjects himself to potential liability." Eisenbart maintains that to deny an unrepresented litagant assistance at counsel tabel when lawyers have the right to have a second chair, additional attorneys,law clerks, secretary, paralegal, legal assistant or any other person with them at counsel table.. is to be in violation of his rights."

Eisenbart again cites little authority to substantiate his anti-trust claim. Nor does he cite authority for the contention that being a notary permits a nonlawyer to assist at counsel table.. Furthermore, since any cases he does cite regarding assistance from nonlawyers do not stand for the right to have nonlawyer

assistance at counsel table(5) in essence this entire argument is without substantial legal support. We need address it no further. Id.

(5) Johnson v. Avery, 393 U.S. 483(1969); United Mine Workers v. Gibbs, 383 U.S. 715(1966);Botherhood of Railroad Trainmen v. Virginia, 377 U.S. 1(1964); and NAACP v. Button, 371 U.S. 415(1963).

G. Trial by Jury

In his original motion for de novo hearing, Eisenbart demanded a trial by jury. That motion was denied. At the close of the hearing, Eisenbart asked Judge Simanek to explain why he was denied a jury trial. The court answered:

> Because the relief sought before me today is of an equitable nature. A court orde to do something or not to do something and there is caselaw,[sic] there is a case in Wisconsin when the relief sought is an equitable remedy, equitable relief, there is no absolute right to a jury ...[Emphasis added].

Nonetheless, Eisenbart asserts on appeal that he was deprived of his

constitutional right to a trial by jury as the relief was not purely equitable. As the trial court told him, the issue has been decided in Wisconsin. Schramek, 145 Wis 2d at 708, 429 N.W. 2d at 506. Eisenbart offers little discussion of Schramek nor reasons for its reconsideration. His argument, therefore, is without merit.

H. Propriety of Two-Year Injunction

Eisenbart contends that for an injunction to be issued, the injury must be real, not imaginary. He claims that the trial court erred in issuing the two year injunction because Masters failed to establish that she actually was in imminent danger. He contends that the anonymous telephone allegated threats are hearsay and that the 1988 physical confrontation was singular, Masters was aggressor, and was never repeated. Eisenbart concludes that, at best, Masters' late allegations amount

to" mere fear that something is liable to occur at some indefinite time in the future."

The grant or denial of injunctive relief is within the sound descretion of the trial court and will not be upset absent showing of an abuse of discretion. Bubolz v. Dane County, 159 Wis 2d 284, 296, 464 N.W.2d 67,72(Ct. App. 1990).

To find an abuse of discretion, we must determine either that discretion was not exercised or that there was no reasonable basis for the trial court's decision. Id.

An injunction is designed to, prevent injury, not to compensate for past wrongs. Pure Milk Prods. Co-op v. National Farmers Org., 90 Wis.2d 781,802, 280 N.W. 2d. 691, 701(1979). It is not necessary for the plaintiff to await actual injury. Id. Rather, the plaintiff must show a

sufficient probability that the future conduct of the defendant will violate a right of and injure the plaintiff, and that the injury is irreparable, ie. not compensable by damages. See Bubolz.

Here the trial court agreed that anonymous telephone calls were hearsay. It also recognized that the altercation between the parties occurred some 2 1/2 years ago and that Eisenbart disputed that his actions were violent. The court concluded, however, that:

> there is a basis for the issuance of an injuction simply by virtue of the past record. people have lived together, they have since seperated. There was an act of violent nature in the past and there is an anonymous allegation of physical,threat of physical harm to the ultimate harm causing death. Allegedly made by Mr. Eisenbart to Ms. Masters 2 1/2 years ago in the context of, well, this custodial fight will continue until one of us dies.

The trial court weighed the evidence and made credibility determinations. It declined to consider the alleged phone

threats. Instead, it found a risk of imminent harm in the combination of the past violent episode which included the statement Masters claims Eisenbart made that he would fight for joint custody until one of us dies". The trial court applied the correct law and stated its reasoning on the record. we cannot say this represents abuse of discretion.

I. Frivolous Appeal

As a final matter, we conclude that Eisenbart's appeal is frivolous. Several of his arguments are launched without proper leagal support. Others represent challenges to issues settled in Wisconsin. Eisenbart neither recognizes that case law nor makes a good argument for an extension, modification, or reversal of it. See Sec. 809.25(3)(c)2 Stats. Accordingly, although we affirm the trial court, we remand the case to it for a determination of

costs, fees, and reasonable attorney's fees.

By the Court-- Order affirmed, but cause remanded with directions.

Not recommended for publication in offical reports.

PERSPECTIVES ON WOMEN AND VIOLENCE AS DATA FOR QUESTION OF NEED TO UNCONSTITUTIONALLY EXPAND EQUITY TO ENJOIN CRIMINAL ACTS AS HAS HAPPENED IN **WISCONSIN** AND MANY OTHER STATES

Suzanne K. Steinmetz, PhD, associate professor of individual and family studies at the University of Delaware, is one of the nation's most respected researchers in the area of gender violence. In Women and Violence: Victims and Perpetrators (American Journal of Psychotherapy, July 1980)., Steinmetz wrote:

If violence against men is recognized in history, recognized by law, recognized by comic strips, why has there been almost no attention given to this problem? There are several reasons. First... case material has been lacking for abused males. Second, select inattention, both by the media and by the researchers has been an influence..It is not likely that feminist researchers and counselors will publicly

acknowledge that males might also be victims.

In 1977, Froli et al found 61% of all studies on gender and violence show that women are no less violent than men--and the Froli study did not even take into account the violence in the home. Among other research findings in other studies:

*Of every 100 children who are abused, 47 abused by Mother, 25 are abused by Father.(Texas Department of Human Services)

Note: 1990 that was 54% Mothers, 18% Fathers, nationally.(Gov't Studies from Colorado).

*Of every 100 children victimized by violence, 62 are victimized by their Mothers.(Steinmetz 1980)

*Of every 100 children at serious risk of injury from abusers, 63 are boys. (Steinmetz 1980).

*Of every 100 youthful males who are

sexually molested, 60 of the molestations are by women.(Fritz et al 1981).

*Of every 100 dating couples, 33 men commit a violent act upon their partners, but even more, 39 women will also commit such acts. (Sugarman et al 1989).

Note: The number of women entering prison for violent acts is rising 3X that of men.(1992 Stats from U.S. Bureau of Stats.)

*About 1.8 million women are victimized by male intimates each year... but 2.1 million men are victimized by female intimates each year (Straus 1977)

Note: That gap is widening ie. increase in female

to male violence and a slowing of male to female violence.

*Of every 100 women in battering relationships, 25 admit that they used physical force at some time to impose their will on their partners. (Walker 1984).

*Of every 100 women in battered mowen shelters, 50 assaulted their partners in the previous year, and 42 will assault their partners in the six months after leaving the shelter. (Giles-Sims 1983).

*Of every 100 families, 3.8 expierience severe husband to wife violence--but 4.5 expierience severe wife to husband violence.(Straus 1975)

*From 1976 to 1986, rate of violence by husbands against wives dropped from 12.1 to 11.3% while the rate of

violence by wives against husbands rose to 12.1 from 11.6 (Straus and Gelles 1986).

*Violent acts by wives against husbands exceed the number of violent acts by husbands against wives by 17% (Straus 1977).

Note: That percentage is rising!

*Of every 100 gay males, 12 have been victims of coerced sex by gay male partners but of 100 lesbians, 31 have been victims of coerced sex by lesbian partners. (Waterman et al 1989).

*Of every 100 domestic assaults on men, 82 involve weapons used by females, of 100 domestic assaults on women, 25 involve weapons used by males. (McLeod 1984).

*Of every 100 homicides committed by women, 58 are premeditated. (Mann

1988).

*Of every 100 women who kill in domestic situations, 78 have criminal histories and 55 have a history of violence. (Mann 1988)

Despite such overwhelming evidence to the contrary, we continue to pretend that only males batter and that only males murder. And even in those instances in which wereluctantly concede that a woman has been criminally violent, sheis treated differently from men who engage in similar violence. Out of every 100 women who kill, 83 will serve no prison time or only a year or less. (Mann 1988). Females commit approximately one of eight homicides.(That number is rising).

It is time we acknowledge the problem of female violence, and deal with it in a meaningful fashion. Far from pardoning women for "burning bed" murders, it is time

that we put to bed the myth of victimized femininity and make it hot for all those who assault and murder. It is time in short, to hold women as well as men responsible for their actions. Domestic abuse arrests of men as primary aggressors far exceeds any of the statistics given here or any that have not been quoted. The myth of male abuser/female victim is out of control in law enforcement and our judicial system. We do not need domestic abuse laws but need to treat all who assault,harrass, or sexually abuse equally under the law.